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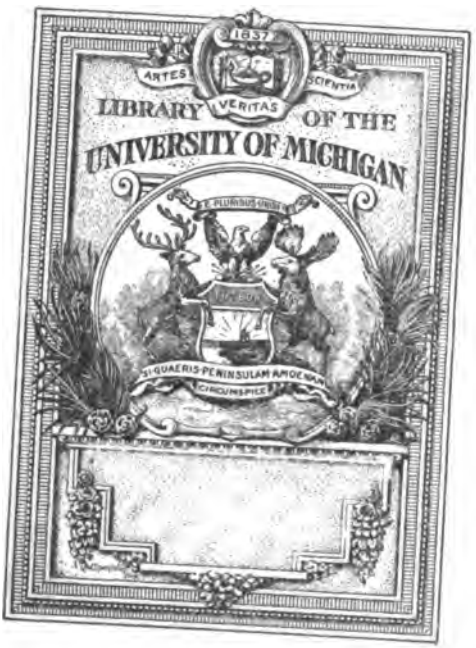

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PROCEEDINGS AND DEBATES

OF THE

NSTITUTIONAL CONVENTION

OF THE

3-3-53-2

STATE OF NEW YORK,

HELD IN 1867 AND 1868,

IN THE

CITY OF ALBANY.

REPORTED BY EDWARD F. UNDERHILL,
OFFICIAL STENOGRAPHER.

VOLUME IV.

FROM PAGE 2401 TO 3200, WITH INDEX.

ALBANY:
WEED, PARSONS AND COMPANY,
PRINTERS TO THE CONVENTION.
1868.

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IN CONVENTION, *Feb.* 27, 1868.

Resolved, That there be printed, in addition to the number already printed, a sufficient nu
ber of copies of the debates, documents and journals, to furnish each of the members w
three copies; and also one copy each to the Mayor and the members of the Common Cou
of the city of Albany, and one copy each to the State Law Libraries at Rochester and Syracu
the law libraries of the several judicial districts, the Law Institute, the Astor Library, and
New York Historical Society in the city of New York, and the Young Men's Associations
the cities of Albany and Troy.

LUTHER CALDWELL, *Secretary*

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deny than to limit the right to bring a second appeal. By making any limitation we incur the hazard of unjust and unequal discrimination. What sort of limitation shall we have? Shall we open the court of appeals to the heavy cases of the rich man, and close it to the small case of the poor man? Shall we open it to an equity and close it to a common law action; open it to a constitutional and close it to a statutory action? If we do this, how shall we answer for it, that all men are equal before the law? Shall we make commissions? As has been suggested, these commissions will prove remarkably tenacious of life; and instead of one court of appeals we shall have two; and the very remedy that we seek, the very end we wish to obtain by having one court, that is, harmony of decision, will be utterly destroyed by having two. Again, sir, I insist that the court of appeals, or any court like the court of appeals, to which a party has an unrestricted and unlimited right to bring a second appeal, is unnecessary. One trial and one appellate court for one case is enough. If gentlemen will look into the Constitutions of other States they will find that most of them rest their judicial systems upon one trial and one appellate court. Two appellate courts for one case rest upon the principle that one of these courts is inferior, and the other superior, that one is bad and the other good, that one is experimental, the other final. I would like to know what right we have to make a poor appellate tribunal? I would like to know what right we have, as framers of the organic law of the State, to compel a suitor to take his case through a poor court, through a poor appellate tribunal, in order to reach a good one? If we can make a good court of appeals we can make a good general term, as well. If the general term is good, we need not go beyond it; if it is bad, we should not make it. If we can bring into the court of last resort the best judicial minds of the State we can bring them into the general term as well. If we will bring them into the general term, we shall not need a court of appeals. I submit it is a palpable absurdity to compel a suitor to take his case through a court, the decisions of which he is not bound to respect, and which he may whistle down the wind at pleasure. No man is obliged to respect a decision of the present general term. He may abide by it if he chooses, but he may abide by any chance as well. Again, I am opposed to two appellate tribunals, as a matter of right to the citizen, for this additional reason: that to delay justice is to commit wrong. "It is to the interest of the State that litigation should end," is a maxim as wise as it is old. To delay justice is to deny it; and the State that delays justice is but little better than the State that denies it, for while it is delayed it is denied. How long is justice delayed under the present system of two appellate tribunals? After a case has been decided in general term the failing party has two years in which to bring his appeal to the court of appeals. He may then rely upon having six more years before it shall be decided. Eight years delay, in all, and then after the decision of the appellate court is reached, in the vast majority of cases, the decision of the inferior appellate tribunal is affirmed. Thus it happens, the court of appeals, itself, being the judge, that in the vast majority of cases this delay is unnecessary and unjust. How vexatious it is, the weary, waiting, heart-sick suitor best can tell. I submit, it is better that justice should be speedy, if sometimes wrong, than always slow, and sometimes right. I am quite sure that justice, rude, ignorant, but speedy, is better than justice, learned, technical, and slow. The State prospers in repose, and the repose of the rights of the citizen is the repose of the State. In the plan I propose I deny the right of appeal to the individual suitor to the court of last resort. I do this for the very purpose of harmony. Gentlemen contend that we should have a court of appeals like the present system for the purpose of harmony. I aver that the claim of harmony, as connected with the present court of appeals is a downright swindle. There is no such thing as harmony, as a part of the policy of the State. The State cannot bring into the court of appeals a single case. It is not within the power of the State to take any disputed question to the court of last resort, and there obtain the opinion and decision of that court. When a question is decided one way in the first district, and another way in the second district, the State has no power to settle that question. It rests upon the mere whim of the suitor, it rests perhaps in his poverty, whether that case shall go to the court of last resort; so that when you say you have this system for the purpose of harmony, you say what is not true. You have to wait upon the caprice of a suitor; and in that respect your system is wrong. In the system I propose, no citizen shall have the right to appeal; but in the conflict of decisions, where the court in one district has decided in one way, and the court in another district has decided in another way, it shall be the duty of the general term to send that case to the extraordinary term, and let it there be decided. This ought to be done without additional cost or expense, and upon the same printed case and briefs. Such a system would promote harmony of decisions; the State would be able, through its judiciary, to compel it; it cannot now. To illustrate: it is about twenty years since an act was passed in regard to the rights of married women. Under that law the question is daily arising in different parts of the State whether tenancy by the curtesy has any existence. In some districts it has been decided in one way, and in other districts in another. The State itself, through its judiciary, has been utterly unable to decide that question in the court of appeals. Why? Because the suitors themselves were unable or unwilling to carry these cases to the court of appeals. But under the plan I propose, when a conflict of that kind arises, it shall be the duty of the general term to send the case to the court of last resort, in order that the question may be decided, and in order that we may have, in fact as well as in name, harmony of decision throughout the State. I know the remarks which I am now submitting will jar somewhat upon the prejudices of the older members of the profession in this body. I know the tendency of our studies is, to conform us to the precedents of the past

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we have long had two appellate courts in this State. The maxim *via antiqua, via tuta*, sooner or later, forms a part of every lawyer's creed. None know better than the members of the legal profession, the delays which are incident to the present system; and none know better than they that this delay almost always prevents justice, and very rarely promotes it. I think that in framing the organic law of the State, we ought not inquire what is best for ourselves, but for the State. Since the multiplicity of business is so great that any one court cannot discharge it, where the right to bring appeals is unlimited; and since two appellate tribunals are unnecessary in any one case, let us have but one, and that one a good one, to which a citizen has the right to appeal; and let us have a court of last resort to which the State, through its judiciary, may send its doubtful cases for official adjudication. Let harmony be the policy of the State, not the whim of the suitor.

The CHAIRMAN—The Chair must hold the amendment to be out of order; it is not germane to the subject.

Mr. COMSTOCK—I move to strike out the words "shall be ineligible to a second term," and insert in place thereof " and shall not be elected for a second term." It may be that the two expressions mean the same thing; yet I think it will be found convenient in practice to make the change. By a subsequent section in the report of the committee it is provided that the Governor and Senate may fill temporary vacancies in that court until the elections come round when they can be filled by the people. The question will arise probably at no distant day whether one of these retired judges who has served out his elected term can be appointed by the Governor and Senate to fill one of these occurring vacancies, and to avoid ambiguity of expression I propose the language shall be "and shall not be elected for a second term." These old retired judges will be very useful material for the Governor and Senate to use in the filling of occasional vacancies.

The question was put on the amendment of Mr. Comstock, and it was declared carried.

Mr. GOODRICH—I desire to offer the following substitute for the proposition under consideration:

The SECRETARY read the substitute as follows:

SEC. 2. There shall be a court of appellate jurisdiction, called the court of appeals, composed of seven judges, to be elected by the electors of the State. The judges of the present court of appeals, elected thereto and in office when this Constitution goes into effect, shall, for the remainder of their respective terms be judges of the court of appeals hereby established; and the other judges first elected shall be classified, so that one of the judges of the court shall go out of office at the end of every second year. After the first election, the judges elected to the court of appeals shall severally hold their office for fourteen years.

Mr. GOODRICH—Mr. Chairman, I have listened with no ordinary interest to the discussions which have taken place in reference to the organization of the court of appeals. All agree that improvements in our judicial system are demanded. In that system a court corresponding with the court of appeals is a necessity. For, the supreme court, which is the great business court of the State, must be divided into different branches, as no one court, acting as a unit, can possibly perform the judicial labor arising out of the business affairs of so large a State. With these different branches in that court, acting under one name as so many different courts, whether they be eight or some number less, there would be no uniformity in the law of the State, unless there shall be created over them some appellate court that shall act as a unit in reviewing and bringing into harmony and uniformity their conflicting decisions. That is the office of the court of appeals. In reference to this court, the committee have already determined that the tenure of office for the seven judges that are to compose it, shall be fourteen years. The pending substitute of the gentleman from Onondaga [Mr. Comstock] proposes to make the judges all ineligible for reelection. To that I am opposed. It is insisted by those who maintain that the judges of this court shall not be eligible for re-election, that to make them so tends to impair their independence —to take from them that uprightness and impartiality so essential to the character of a good judge. On the same ground it has been urged that they should not be elected at all, but should be appointed by the Governor and Senate. If by an "independent judiciary" is meant a judicial system which creates and continues in office judges under circumstances most favorable to integrity in the discharge of their duties, all must agree in desiring such an independent judiciary. The question is, is the elective system—do frequent elections, as applied to judges, any way tend to impair that independence on their part? In the same sense, certainly, it is equally essential that all officers of the State, in both the legislative and executive departments, should also be independent and impartial in the discharge of their duties. If the elective system cannot be applied in the selection of judges, with safety to their independence and integrity, I do not see how it can be in the selection of the other officers named. In short, this claim that to elect by the people judicial officers, and to elect them for such terms as will admit of their reelection, if they prove themselves worthy and the people are desirous of continuing them in office, tends to debase and demoralize them, is a doctrine which, if carried out in all its legitimate consequences, would, in my judgment, lead to a total overthrow of the whole system of popular elections. Its utterance here fills me, therefore, with surprise and alarm. In support of it, we are told that in England judges are appointed; and that there their appointment for life, or during good behavior, has been found to be necessary to their independence. It is to be remembered, that political society in that country differs in its structure entirely from what it is in ours. There, the body politic is made up of three distinct estates — the crown, the nobility and the commons — each having rights and interests of its own, and each being, in respect to

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ter, is hostility to the others, insomuch that English history is to a great extent but a record of the struggles which are perpetually going on between these jealous and contending elements. Under such a state of society a life tenure for judges, receiving their appointment from the crown, may well be a necessity; since, were it otherwise—were they to be appointed for a term of years, and thereafter to be dismissed or retained in office at the pleasure of the appointing power—they would indeed lose their independence and become incapable of deciding impartially in all cases in which the rights or interests of the people or the nobility should be opposed by the interests or the known wishes of the crown. The history of the life tenure of the English judges shows it to have obtained precisely from this consideration. Now, with us there are no such separate and conflicting interests, no such rival powers, to be jeopardized by making judges, as well as all other officers strictly dependent on the people, in whom resides the true sovereignty of the State, and in whom center all—all the great interests of State. I do not deny that frequent elections tend to make the judge feel his dependence on the people, nor that that feeling on his part is not directly calculated to make him discharge the duties of his office in a manner conformable to their supposed wishes; but what I claim is that thus feeling and acting makes him all the more independent and impartial in his decisions between suitors, because no one who has the slightest qualifications for that office can fail to comprehend that impartial justice is what the people demand of the judge and that any departure from that in the discharge of his duties is sure to meet with their severest condemnation and reproach. Under our form of government a sense of dependence on the people is therefore one of the strongest incentives to the faithful discharge of duty on the part of all the officers of State. Accordingly, while I deny that there can be the slightest necessity for rendering the judges of the court of appeals ineligible for a second term, the influence of such a provision, if adopted, will be bad every way. On the judge himself it will be bad; because, in making a re-election impossible, one powerful motive for the faithful discharge of duty is wholly lost on him. It is also unjust to the people, to whom it denies the right to continue in office one whom they have proved and may have found to be capable and faithful, and whom, therefore, they might re-elect with the certainty of securing the services of a valuable judge. In every way, in my judgment, the proposed restriction is both unnecessary and unwise. The gentleman from Onondaga [Mr. Comstock], in the amendment which he has submitted, also proposes that in the first election of the seven judges of the court of appeals no elector shall be allowed to vote for more than five of their number, including the chief justice, thereby securing to the minority party, at the election, the certainty of selecting two of the judges. Sir, this representation or election by the minority, though I know how illy prepared I am to discuss it, I can clearly see to be absurd, not to say trifling and puerile. It ought to be a sufficient objection to it that it is a direct and conceded departure from the established principles of our system of government, which is, throughout all its departments and details, strictly a government resting on the will of the majority To the extent of the two judges the proposition is to make it a government by the will of the minority, even though that minority be ever so meager and insignificant. There is neither principle nor sense or propriety in the proposition. It completely ignores all the utility derived from party contests, where the opposition extends to the whole ticket, and where, in order to succeed on the merits of its candidates each party is compelled to put in nomination its best men; for, in all such cases, the very intensity of partisan zeal is made to subserve the interests of good government. In all such cases, too, it is only the nominations that are made by parties; the prerogative of choosing is reserved to the people, and to the majority of the people which does not by any means always coincide with the strongest party. Under this minority representation, so-called, the minority party, if it chooses to waive the contest as to the five judges, has nothing to do but simply nominate any of its adherents for the two judges and they pass into office, not by the will of the majority of the people, not even by the will of the majority of the minority party, but by a constitutional necessity from having been put in nomination by a partisan convention To say nothing of its absurdity, such a mode of selecting judges for the highest court of the State cannot but be unwise in the extreme. I know it is sought to be defended and justified under the plausible pretext that its tendency will be to keep the court from becoming partisan in its character. Its adoption is urged upon that ground. But, sir, how is it now? Are judges elected as partisans? The most that can be said is that their nomination is from parties; but it is the people, always the majority of the people that chooses, out of the number of candidates presented, which of them shall be judges. The choice is not the act of a party merely, but the act of the people. Nor does it always happen that the candidates are chosen who are presented by the strongest political party; but whether they are or are not, the choice itself, in every instance, is the act of the people; and therefore the judge goes on the bench as the people's rather than his party's judge. But how will it be with the judge whose selection is to be left to the minority under this scheme for minority representation now proposed? Can their selection be in any sense the act of the people? No, sir; the people have nothing to do with it. Their selection is purely the act of a mere party convention; and judges who are thus selected and placed on the bench, not only without the sanction of the majority of the people, but also, it may be, in direct hostility to and in spite of it, cannot fail to carry this conviction with them, and therefore to consider themselves, as in fact they will be, mere partisan judges. So far, therefore, from its having any effect to keep the judges of the court from becoming partisan in their character, the whole scope and tendency of the scheme is directly the other way. It is the very thing that will force that character upon the judges. From every

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consideration of principle and of policy, I am utterly opposed to the insertion of so pernicious an element in the organic law of the State. For these reasons I trust the amendment which I have moved, and which strikes out of the substitute offered by the gentleman from Onondaga [Mr. Comstock] both this proposition of minority representation and that of rendering the judges of the court of appeals ineligible for re-election, may prevail.

The CHAIRMAN—The Chair must hold that the substitute offered by the member from Tompkins [Mr. Goodrich] is out of order. All of the propositions contained in it have been passed upon in committee, and some of them as many as three times.

The question was put on the adoption of the amendment of Mr. Smith, as amended on motion of Mr. A. J. Parker and Mr. Prindle, and on a division, it was declared carried, ayes 50, noes not counted.

Mr. GOODRICH—Will my amendment now be in order? If so, I will make the motion.

The CHAIRMAN—The amendment cannot be entertained, every proposition it contains having already been passed upon.

Mr. GOODRICH—I submit that the proposition has not been passed upon at this stage of the action on the section, and will ask whether that does not change it?

The CHAIRMAN—The Chair sees no possibility of ever ending the debate upon this article if propositions passed upon, reconsidered, and again passed upon, can still be considered even in new combinations, and therefore must hold that it is out of order.

Mr. McDONALD—I move to amend the section so as to continue the present judges in office.

The CHAIRMAN—The amendment is not in order. That question has been postponed by a vote of the committee, on motion of the gentleman from Steuben [Mr. Spencer], until all the various sections of the article shall have been considered.

Mr. RUMSEY—I proposed an amendment some time ago to this section, and I ask that it be now considered.

The CHAIRMAN—It can only be done by reconsideration of the vote by which its consideration was postponed until the sections relating to the supreme court shall have been considered.

Mr. RUMSEY—I am satisfied that it should take that position.

Mr. LANDON moved to add at the end of the section the following:

"No right of appeal to the court of appeals shall exist, but the general terms may by order send such causes to be there heard as may seem necessary in order to promote harmony throughout the State."

Mr. LANDON—We cannot get rid of the court of appeals, but it seems to me to be the duty of this Convention so to restrict the right of appeal that there shall at least be harmony of decision throughout the entire State.. That harmony can never exist so long as the act of appeal shall depend upon the individual. If we have a good general term the suitor does not need to go to the court of appeals. But in that class of cases where one district decides one way, and another district decides another way, it should be the policy of the State to send those causes to the court of ultimate resort, in order that they may there be finally decided and that harmony may exist, whether the suitor desires it or not. I say it is a humbug to say we have harmony of decision or can have it when the State cannot by any system of her own send cases to the court of ultimate resort. If the right of appeal is left open and unrestricted, this court cannot do its business any more than the court we now have; but we will have harmony if we make it the policy of the State to send causes to the court of appeals to reconcile conflicting decisions. Causes of a political nature may also be sent there if you choose. Send causes there which are of a constitutional nature. The State does not owe it to the citizen to give him two courts of appeal, but the State owes it to herself to be able, notwithstanding the caprice or poverty of the individual, to have harmony of decisions throughout the State.

The question was put upon the adoption of the amendment offered by Mr. Landon, and it was declared lost.

Mr. LIVINGSTON—I desire to offer an amendment; I move to add to the present section the ninth, tenth and eleventh lines of the section reported by the committee:

"The judges of the court of appeals shall have power to appoint and remove a clerk of said court or reporter thereof and such attendants as shall be authorized by law;"

Mr. A. J. PARKER—I will ask the gentleman to accept an amendment to that proposition, in these words:

"Any five members of said court shall form a quorum, and the concurrence of four shall be necessary to a decision. They shall have the appointment, with the power of removal, of the reporter of the court and clerk, and such attendants as may be authorized by law."

Mr. LIVINGSTON accepted the amendment.

Mr. M. I. TOWNSEND—I would like to ask the gentleman from Albany [Mr. A. J. Parker] if it would not be better to authorize four judges to hold the court? I will hereafter move an amendment to the amendment that four judges be authorized to hold the court, and I do it for the purpose of enabling the court to sit continuously and transact its business from month to month. If there are seven judges and four hold the court, it will be entirely practicable to continue the business of the court perpetually.

Mr. A. J. PARKER—The amendment, as accepted, presents what was included in the third section of Mr. Goodrich's minority report, modifying it only so as to provide for the appointment of clerk as well as of reporter. I, for one, much prefer that five judges should be requisite to hold the court, and four to decide. It is indispensable that four should agree in deciding; and if you say that four only of the judges may sit, you must have a unanimous vote before a case can be determined. There are in the court seven judges. It seems to me no more than reasonable to require that five shall be necessary to constitute the court; generally all seven will be present. It would be a bad policy to allow so small a number

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...ar to constitute the court and I think it will ...ve from the dignity of the court and the ...ence that should be felt in its decisions if ... less than five to hold the court. I be... therefore, that the amendment as originally ...ed by Mr. Goodrich, and I believe also the ...ity report, provides the better plan, that ... should sit in all cases, and four should ...

Mr. COOKE—I think it would be better to ...e this matter in the hands of the court itself, ... the Legislature, if any legislative action is ...ary at all. No Constitution in this State ...ver yet prescribed the number of judges ...ary to constitute a quorum. I think that if ...y furnish material for a good court that is ... can be required of this Convention, and I ... it is far better to leave the subject to be ...ated as the necessities of the case may ...der suggest or require. It may be that the ...islature will find it necessary to do something ...ecure the dispatch of the mass of business ... before the court. It may be that some plan ... have to be devised either by the court itself ... by the Legislature to work off that business, ... it seems to me that we had a great deal better ...ve it to be determined as the necessity may ...

Mr. M. I. TOWNSEND—If the gentleman from ...ser [Mr. Cooke] will prepare an amendment to ...t effect, I will withdraw my proposition.

Mr. COOKE—I am altogether opposed to the ...osition of the gentleman from Albany [Mr. A. ... Parker] for the reason I have stated.

The CHAIRMAN—The Chair would state that ...e proposition of the gentleman from Albany [Mr. A. J. Parker] involves also the appointment ... the clerk and the reporter.

Mr. COOKE—Then I call for a division of the ...estion.

The CHAIRMAN—The question then is on the ...endment of the gentleman from Kings [Mr. ... Cox], as amended and upon which a division ... asked.

The question was put on the branch of the ...endment relating to the number of judges in ...e court of appeals necessary to constitute a ...orum, and it was declared carried.

The question then recurred on the second ...anch of the amendment relating to the appoint...ent and removal of the clerk and the reporter ... the court, and of such attendants as may be ...thorized by law, and it was declared carried.

Mr. HALE—I move to reconsider the vote by ...ich the number of judges necessary to consti...te a quorum has been fixed, and I do it upon ...is ground: Heretofore, as stated by the gentle...an from Ulster [Mr. Cooke], the provisions in ...gard to the number necessary to constitute a ...orum have been left to be made by the Legis...ature, and also the provisions in regard to how ...any of the judges shall agree in order to decide ... case, and the Legislature have always said that ... case of failure to agree upon a second re-argu...ent the judgment should be affirmed. Now, if ...is provision is inserted in the Constitution, it ...ems to me that we shall be in this dilemma, ...at in case of the failure of four judges to agree ...s provision is made to meet the difficulty.

Mr. COMSTOCK—It seems to to me that this had all better be left to legislation. The Constitution of 1846 was entirely silent as to the number of judges required to make a quorum. It declared that the court should be composed of eight judges, and the question arose at an early day whether, even under legislative authority, less than eight judges could sit and hold court. It was determined, however, that they could—that the general law of judicial bodies not less than of parliamentary bodies only required that a majority should be present—all having a right to be present, yet the Legislature did afterward act upon it, and, by the Code of Procedure, or by the judiciary act, provided that a quorum should consist of six of the eight judges, and that the concurrence of five should be necessary in a decision. If we put this provision into the Constitution where no change can be made in it hereafter until the next revision, it is quite reasonable to anticipate some difficulty from it, because a condition of things may arise, as suggested by the gentleman from Rensselaer [Mr. M. I. Townsend], in which it might be desirable to enact by law that four should constitute a quorum, to the end that there might be judges not sitting in court, but laboring upon the cases already argued. I hope, therefore, that the motion to reconsider will prevail.

The question was put on the motion of Mr. Hale to reconsider, and it was declared carried.

The question recurred on the adoption of the first branch of the amendment relating to the number of judges necessary to constitute a quorum.

Mr. A. J. PARKER—I certainly must differ from the gentleman from Onondaga [Mr. Comstock] as to the probability of any embarrassment arising from this provision. Suppose four judges do not agree, what then? Why then the case must be re-argued, but if the whole seven sit, as they probably will, there will be very little probability that four will not concur. I do not myself see how any difficulty is to grow out of it, and it seems to me that it is better to settle this now, and provide that five shall constitute a quorum, and that four shall concur in a decision. The great difficulty about disagreements has grown out of the fact that our court has consisted of eight judges, and they disagreed only when they stood four to four. That we avoid here, as the court will consist of seven, and I do not think there will be any great difficulty in securing the concurrence of four, so that it will very rarely, if ever, happen that a re-argument will be necessary. I do not know what more the Legislature could do to avoid the possibility of a disagreement.

Mr. HALE—Will the gentleman permit a question?

Mr. A. J. PARKER—Yes, sir.

Mr. HALE—If five consitute a quorum, suppose only five sit?

Mr. A. J. PARKER—Then four must concur to decide a case.

Mr. HALE—But suppose they do not?

Mr. A. J. PARKER—Why, then it follows as a matter of judicial law that the case must be re-argued.

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Mr. W. C. BROWN—I offer the following amendment:

"The number of judges to form a quorum, and the number necessary to concur in a decision shall be prescribed by law."

The question was put on the amendment of Mr. W. C. Brown, and it was declared carried.

The question then recurred on the first branch of the original amendment as amended.

Mr. COMSTOCK—I do not think that we need any such provision as that. It is unnecessary to say in the Constitution that the Legislature shall act upon this; leave it to the general rule governing such bodies until the Legislature does intervene.

The question was put on the first branch of the original amendment as amended, and it was declared lost.

Mr. HALE—I would inquire what amendment was just lost?

The CHAIRMAN—It is in relation to the number of judges required to constitute a quorum; that portion of the amendment is stricken out, and the portion of the amendment which provides for the appointment of a clerk and a reporter is adopted.

Mr. A. J. PARKER—Then I offer the following instead of it:

"Any five of the judges of said court shall form a quorum, and the concurrence of four shall be necessary to a decision until otherwise provided by law."

Mr. COOKE—Is not that substantially the proposition which has just been voted down?

Mr. ANDREWS—I do not see any necessity for fixing a general rule by the amendment just made, when by the qualifications attached to it the matter is referred to the Legislature.

Mr. A. J. PARKER—I am very much afraid that unless you require five judges to sit in court, the Legislature may authorize a less number to hold court, and thus destroy the influence of the court. They may perhaps divide it up so as to make two courts, and thus create the very evil that we desire to avoid. Now, it seems to me that we should at least provide how many shall hold the court, otherwise the question will arise in the court at once whether any less than seven can do so.

Mr. SPENCER—I would like to ask the gentleman from Albany [Mr. A. J. Parker] if any evil has occurred up to this time or even been apprehended from the difficulty which his amendment suggests?

Mr. A. J. PARKER—I think an evil existed before in the number of the court and in the provisions which the Legislature made in regard to it, so that there should be four for affirming and four for reversing a judgment, thus making a re-argument necessary. I believe that if this provision be adopted re-argument will not be necessary in more than one case in a thousand.

Mr. BARKER—We deem it necessary to say how many judges shall constitute the court, and I think it would be wrong to leave it in the power of the Legislature to say that less than a majority of that court should constitute a quorum. Without this provision it might be that one judge sitting in review could make a decision as the decision of the court; but in my opinion, when less than five of the judges are able to attend at a term, the term should be dissolved, and the court adjourned until the next stated term.

Mr. COOKE—To obviate all this difficulty, I propose an amendment to the amendment. I propose to amend by providing that a majority of the judges shall constitute a quorum.

Mr. A. J. PARKER—For one, I object to that. That would enable four to constitute the court. If we are starting with a court of seven, I think we ought at least to require five to hold the court. I believe it would lower the dignity of the court and impair its usefulness to fix the number as low as four.

The question was put on the amendment offered by Mr. Cooke, and it was declared lost.

The question then recurred on the amendment of Mr. A. J. Parker.

Mr. COMSTOCK—I think that provision is the least objectionable if we say any thing on the subject.

Mr. DALY—Before the vote is taken on that question I desire to say a few words. A question was asked me yesterday, in the course of debate, which has become the subject of an article in the Argus, and of comment in the debate this morning during my absence. The question asked me was in relation to the corruption of the judiciary. I desire to express no opinion upon that subject now; I merely desire that what I said yesterday in respect to it may not be misunderstood. I understood the question asked me yesterday to be whether I had ever heard of corruption on the part of the judges of the State since the adoption of the Constitution of 1846; and so understanding the question, I answered it by pointing to an article in the North American Review, containing charges of corruption, without meaning to say or to assume that those charges were true or untrue, and without professing to have any personal knowledge on the subject. In the article in the journal to which I have referred, it is stated that I was asked whether I had any personal knowledge of the taking of a bribe by any judge; and I find upon inquiry that the question was probably put in that way, for it was so taken down by the stenographer. Supposing, very naturally, that the gentleman who asked the question did not intend to imply any personal knowledge of that character on my part, I did not understand it in that way. If I had so understood it, I should have answered very distinctly that I had not any such knowledge. I understand that in the Convention this morning, during my absence, the gentleman who asked the question yesterday recurred to the subject, and said that it appeared upon my statement that the corruption of the judiciary of New York was confined entirely to the city of New York. The corruption of the New York judiciary, or any question of that nature, is a very delicate subject to interrogate me, an existing judge of that city, upon, or for me to speak upon, as I am necessarily one of the parties involved in any such inquiry. I desire, therefore, merely to reiterate now what I supposed I had said yesterday, and what I certainly meant to say in reply to that question, that from what I have heard about the corruption of

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e judiciary, it is not confined to the city of New rk, and that I have heard charges of corrup- n made in other parts of the State besides that y, quite as grave as any made in the article in e North American Review. If I am rightly formed of what the gentleman [Mr. Graves] said this morning, he will do me the justice to believe hat he misunderstood the remarks I made yester- ay, when he quoted me as an authority for the atement that corruption in the judiciary, if it exists, is confined exclusively to the city of New York.

Mr. VAN COTT—I move to amend by strik- g out the words at the end of the amendment, until otherwise provided by law."

Mr. COOKE—Then it is identical with the estion we have once passed upon and voted own.

The CHAIRMAN—The Chair is of opinion that hat would leave the amendment precisely as it as been already intended.

The question was put on the amendment of Mr. A. J. Parker, and it was declared carried.

Mr. GRAVES—I move to add at the end of the section the following: "The court shall con- tinue its session at each term thereof until the causes upon the calendar shall be heard or decided, or put over, or disposed of by the consent of the parties."

The question was put on the amendment of Mr. Graves, and it was declared lost.

The SECRETARY read the third section as follows:

SEC. 3. Upon the organization of the court of appeals under this Constitution, the causes then pending in the present court of appeals shall be- come vested in the court of appeals hereby created. Such of said causes as are pending on the first day of January, eighteen hundred and sixty-eight, shall be heard and determined by a commission to consist of five commissioners of appeals. But the court of appeals hereby cre- ated, for cause shown, may order any cause thus pending before the said commissioners, to be heard in such court. Such commission shall con- sist of the judges of the present court of appeals elected thereto, and a fifth commissioner, who shall be appointed by the Governor, by and with the advice and consent of the Senate.

Mr. SPENCER—I offer the following amend- ment: Strike out after the word "created," in line four, and insert the following:

The SECRETARY read the amendment as follows:

"In case there shall at any time be such an accumulation of business in the court of appeals that the same cannot be disposed of speedily and promptly, and the fact of such accumulation shall be duly certified by the court to the Governor, he shall, prior to the final adjournment of the Legislature, after being so certified, by and with the advice and consent of the Senate, appoint five commissioners, with power to hear and deter- mine such cases pending in said court, as shall by said court be assigned for the purpose. Such commissioners shall hold their office for not less than one year, nor more than two years, and un- til they shall have disposed of the business so assigned, and they shall receive the same com- pensation as judges of the court of appeals. Any vacancy occurring in the office of commis- sioner shall be filled in such manner as the Leg- islature shall by law direct.

Mr. SPENCER—My object in offering this amendment is twofold. In the first place that the business of the court of appeals may be left entirely under the control of that court, and not be subjected to the disposal or control of any other tribunal, or any other department of the government. It seems to me eminently proper that it should be so. We have endeavored by the article we have framed in regard to the court of appeals, to secure as far as practicable the great ends of such a court, that of unity and that of permanency, in order that the law may be made, as nearly as may be, certain and reliable. Another object which I have in presenting this amendment, is with a view at the proper time and place to offer another amendment, which shall secure in the court of appeals the services of those judges who now constitute the court of appeals, and I shall do so for the purpose of con- tributing so far as it is possible, by that measure, to the permanence and stability of the court, in order to secure the objects which I have already named, certainty and reliabilty in the administra- tion of the law. The members of the present court of appeals having for some considerable time been members of that court, and accus- tomed to its business, and acquainted with its previous decisions will impress upon the new court which shall be organized under this Con- stitution, if one shall be, something of their own method of business, and something of their own construction of the law as it has been declared by that court. On the contrary, if there shall be a court entirely new, observation and experience show that it is likely to lead to the same fluctu- tions and uncertainties in law under which we have suffered for so long a time. By the creation of a commission in the form provided by the amendment, the decisions of the court of appeals proper will stand as the law of this State, while the decisions of the particular cases referred to the commission will be the law for those cases only, and will be in a measure subordinate to the decisions of the court proper, and not possessing the same weight of authority.

Mr. E. A. BROWN—I move to amend that amendment by inserting after the words "not less than one year," the words "and not exceed- ing two years." I am certainly opposed to estab- lishing such a permanent body as this commis- sion would be, to hold office to all eternity.

Mr. SPENCER—I have no objection to accept- ing the amendment of the gentleman, but it may possibly, at the end of that time necessitate the issue of a new certificate and a new appoint- ment.

Mr. McDONALD—I move to amend by saying, "not less than one year, nor more than three years." With the accumulation of causes now on the calendar of the court of appeals, it is very evident that the commissioners will have to sit longer than one year or two years, in order to dis- pose of them.

The question was put on the amendment of Mr. McDonald, and it was declared lost.

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The question then recurred on the amendment of Mr. Spencer.

Mr. CHESEBRO—I hope this amendment will not prevail. It is offered, as I understand it, as a substitute for the provision reported by a majority of the Judiciary Committee. Now, I do not believe in creating a court of appeals for the purpose of doing the business that will belong to that court, and at the same time recognizing in the Constitution the fact that we are creating a court which will not be competent to discharge the duties which will devolve upon it. By inserting this provision, we will enable the court to be just as indifferent to the discharge of their duties as it pleases, because when they shall, by their indifference, have suffered the accumulation of business, all they have to do is to establish and certify to that fact, and the Legislature will be bound to go on and relieve them, by a commission, from the results of their own indifference. We now recognize the fact that there is an accumulation of business that is to be disposed of, but to acknowledge by this provision in the Constitution that the court we are here organizing is not going to have the capacity to do the work of the court of appeals, seems to me unwise.

The question was put on the amendment of Mr. Spencer, and it was declared lost.

The SECRETARY read the fourth section, as follows:

SEC. 4. If any vacancy shall occur in the office of said commissioners, it shall be filled by appointment by the Governor, by and with the advice and consent of the Senate; and if the Senate is not in session by the Governor, but in such case, the term of office shall expire at the end of the session of the Senate next after such appointment. The said commissioners shall appoint from their number a chief commissioner (and may in like manner fill all vacancies in such appointment); (and may appoint and remove such attendants as shall be provided for by law). The reporter of the court of appeals shall be the reporter of said commissioners. And the decisions of said commissioners shall be certified to and entered and enforced as the judgments of the court of appeals. The said commission shall continue for three years, unless the causes committed to it are sooner determined. If at the end of three years from the time of entering on its duties, all the causes assigned to such commission shall not have been heard and determined, the residue shall be heard and determined by the court of appeals hereby created.

Mr. E. A. BROWN—I move to amend by striking out "three," in line fifteen, and inserting "two."

Mr. COMSTOCK—I do not think that would be expedient. The duration of that commission was carefully considered by the Judiciary Committee, and it was thought to be unsafe to make it positively less than three years. There is an arrearage of one thousand cases or more now pending in the court of appeals, and it will probably take a commission, or any other tribunal, over two years to dispose of them. It was thought best, on the whole, to constitute the court with a commission for three years.

Mr. E. A. BROWN—I move to amend in the thirteenth line, where the word "three" occurs by changing it to the word "two." All I have to say is that if we constitute a court with seven judges we do it with the idea that it is to be a working court, and that they are to work at this calendar of accumulated business at least a portion of the time. It seems to me that the new business that will come before the court will not keep the new court consisting of seven, employed, but that they will have much time to devote to closing up the old calendar.

The question was put on the amendment of Mr. E. A. Brown, and it was declared lost.

Mr. BICKFORD—I ask unanimous consent to offer an amendment to the third section.

The CHAIRMAN—The amendment may be received under the head of general amendments. But it may be received now if there be no objection.

A DELEGATE—I object.

The CHAIRMAN—Objection being made, the amendment cannot be received.

The SECRETARY read the fifth section as follows:

SEC. 5. At the end of ten years from the adoption of this Constitution by the people, the Legislature shall have power to provide for the appointment of a commission to hear and determine such causes as may be transferred to it by the court of appeals, in such manner as the Legislature may direct.

Mr. A. J. PARKER—I move to strike out this section.

The question was put on the amendment of Mr. A. J. Parker, and it was declared carried.

The SECRETARY read the sixth section as follows:

SEC. 6. There shall be a supreme court having general jurisdiction in law and equity, subject to such appellate jurisdiction of the court of appeals as may be prescribed by law. The Legislature, at its session next after the adoption of this Constitution, shall divide the State into four judicial departments, and each of said departments into two districts, to be bounded by county lines. The city and county of New York shall form one district. There shall be thirty-four justices of the said supreme court; ten thereof in the department in which is the city and county of New York, and eight in each of the other departments. But the Legislature shall have power to provide for an additional justice in each of said departments. One-half of the justices in each department shall reside in each district of such department at the time of their election.

Mr. HALE—I move to substitute for that section the sixth section of Document 140.

The SECRETARY read the substitute as follows:

SEC. 6. There shall be a supreme court having general jurisdiction in law and equity, subject to such appellate jurisdiction of the court of appeals as may be prescribed by law. There shall be in the State twelve judges of said court. The existing division of the State into eight districts shall continue, subject to the power of the Legislature to change the same, as in this article provided. In the first judicial district there shall be four, and

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in each of the other judicial districts two justices of the supreme court; and the Legislature may provide for additional justices, not exceeding one in each district.

Mr. HALE—The importance of the subject which is now before this committee can hardly be overstated. It is a subject in many respects more important even than that upon which we have just been passing. It is true that the supreme court is in some respects subordinate to the court of appeals. But it is the great court of original jurisdiction of the State. It is the court which comes nearest to the people, and which affects the people most directly and most universally, and with which the people in their ordinary business become the best acquainted. The powers of the judges of this court are in many respects greater than those of any other officers of the State. In a very large class of cases—cases which are said to be in the discretion of the court—there is no appeal from the decision of the supreme court. And there are many of the decisions of that court which are not the subjects of appeal, yet are of momentous consequence to the individuals concerned. And a great proportion of the cases which are appealable through the inability of the parties to incur the expense of an appeal, or from their want of that love of litigation which is necessary to induce men to nurse their lawsuits during the period of five or six years which must now elapse before a case can be decided in the court of appeals, go no farther than the supreme court. The supreme court is in fact, though not in name, to the great mass of litigants in this State the court of final resort. I think, therefore, that we should approach this question with quite as much care, and quite as full deliberation as any other question that will come before the committee. I propose to look briefly at the judicial history of this State so far as it relates to the organization of this court of original jurisdiction. It will be noticed that the amendment which I propose, and the plan which is contained in document 140, which I had the honor to submit, does not affect in any way the question of tenure, or the mode of the creation of the judges, whether by election or by appointment. It relates solely to the organization of the court, and whatever may be the final result of the deliberations of this committee upon these subjects, the question of organization is a distinct question, and the amendments which I propose would be equally proper under any system. For nearly fifty years in the history of our State the supreme court was in fact as well as in name the supreme court of the State of New York. It was a unit. It consisted of five judges. Those five judges held the circuits in different parts of the State. They also sat in banc and reviewed the determinations made at circuit. A convention was called in 1821 for the purpose, among other things, of changing that system. They met then, as we meet now, to discuss the existing judiciary, and the question whether changes were important or necessary. In examining the debates of the Convention of 1821 you will find that the organization of that court was complained of in one respect, and in one respect only—the inadequacy of the force to do all the business of the State. There were complaints of the judges—no complaints of any lack of ability or of corruption on their part—but complaints that they were political judges, and that they sometimes showed partisanship, not in their decisions on the bench, but in their conduct off the bench, and especially in the council of revision. Those complaints were made on the floor of the Convention, although two of the most distinguished judges of that court—James Kent and Ambrose Spencer, were members of that Convention. I have examined those debates with considerable care, but I can find no complaint there of the system, the system which made the court a unit, and which enabled those judges to sit in banc and also to hold circuits and to hold the court which reviewed their own decisions. However, notwithstanding the fact that no complaint was made of the system, a change was made in it, by which, instead of the supreme court consisting of judges who did circuit and banc duty, three judges were appointed to sit in Albany in banc, and the State was divided into eight circuits, in each of which a circuit judge was appointed. There is one fact in relation to this matter which possesses an historical interest, and that is, that the change which was made by the Convention of 1821 was reported by no committee. A judiciary committee was appointed early in the deliberations of that Convention, the chairman of which was Mr. Munro of Westchester, and which contained among other members Judge Sutherland who was afterward upon the bench of the supreme court. That committee reported a system, but their report did not contemplate the change that was made. It retained the old system as to the supreme court, providing for aiding it by the addition of a court of common pleas, with president judges, with an organization similar to that of the supreme court. The report of the committee, however, was rejected, and a select committee was appointed of which also Mr. Munro was chairman. Upon that committee were Martin Van Buren, General Root of Delaware, Col. Young of Saratoga, and other distinguished lawyers of the State; and that select committee also made a report, but their report upon the subject of the judiciary was not adopted; and the system which was finally adopted was one which was introduced by way of amendment to the report of the select committee by a gentleman, I think not a lawyer, Mr. Carpenter of Tioga. The system proposed by him was adopted by the Convention, and prevailed in this State from 1822, until the change was made in the Constitution in 1846. In regard to the organization of the courts it will be seen that the change effected was a sweeping one. Judges who sat in banc under the Constitution of 1821 had nothing, whatever, to do with circuit duty. The supreme court in banc was not a court of original jurisdiction except for some special purposes. It was an appellate court, and an appellate court only. The circuit judges who were appointed in the eight judicial circuits had nothing, whatever, to do on the other hand with the review of decisions. They were simply trial judges, and their office was confined to the discharge of their duties at *nisi prius*. Both those systems however, had one

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thing in common. Co-existing with them from the adoption of the Constitution of 1777 up to 1846, there was a court of chancery, the business of which was very great; and the existence of that court, of course, very greatly diminished the business of the supreme court. Under the system of 1821 the judges of the supreme court were also members of the court of errors, as was the chancellor. In 1846 another Convention was called, a Convention which effected a change still more radical and sweeping than that effected by the Convention of 1821. The first Constitution and the Constitution of 1822 adhered to the appointing system and to the life tenure. The Constitution of 1846 abolished both. I do not now propose to discuss the question whether they did wisely in that. That question I consider as already determined by this committee, and therefore not now before it. I have my views upon the subject which have been expressed heretofore, and which did not concur with those which have prevailed in this committee. But, as I have said, the Constitution of 1846 not only changed the tenure of office, and the mode of selecting judges, but also completely changed the organization of the court; and since the adoption of the Constitution of 1846 there has been no supreme court of the State of New York. I think I speak advisedly when I say this. There has been a supreme court in name, but there has been in fact no such court. In the place of it we have what was called by Mr. O'Conor upon the floor of the Convention of 1846, an octagonal court. We have eight local courts. The evils attendant upon that system have already been somewhat commented upon, yet the system has had its defenders upon this floor. The question as to whether that system should be continued, whether we shall continue as we have been for the last twenty years without any State supreme court, is now before this committee. When the subject of the organization of the supreme court came before the Convention of 1846, there was by no means unanimity among the eminent men of that body—the many great lawyers who were upon the floor of that Convention, in regard to what change should be effected. A Judiciary Committee was appointed in that Convention, which consisted of some of the first lawyers of the State. Its head was a gentleman who afterward filled the office of chief justice of the court of appeals, Judge Ruggles, who perhaps had no superior in this State for judicial ability, and for purity and integrity of character. Among the members of that committee were Judge Brown, of Orange, Charles O'Conor, George A. Simmons, of Essex, and many other gentlemen whom I might name, and who would be at once recognized by all the lawyers upon this floor as men who stood high in the profession, and who were perhaps as able representatives of the bar of this State as could have been selected at that time. That committee, after weeks of deliberation, were unable to agree upon a report. A report was presented by the chairman of that committee which was substantially adopted by the Convention. Although that report had the approbation of the distinguished chairman of that committee, and of several other of its most distinguished members, yet it was denied upon the floor of the Convention that the majority of the committee favored it, and so far as I can gather from looking at the debates, the fact seems to have been that the majority assented to its being reported as the report of the committee without concurring in many of its details. So far as it divided the court into these eight sections it was disapproved of, not only by many of the most distinguished men of that committee, but also by many of the ablest lawyers and strongest men in the Convention, some of whom were not lawyers, and whose views are recorded in the debates. The evils which have resulted from that system were then predicted and pointed out, and to some extent they were admitted even by those who were in favor of the change. Judge Brown, in advocating the adoption of the majority report, admitted that there was an element of evil in it, that diversity of decision would be likely to exist under it, yet hoped that it would not exist to so great an extent as others feared. In advocating the system, and endeavoring to show that it would not necessarily create such diversity of decisions as was predicted by some of its opponents, the friends of this system said that the judges in these courts would interchange; that provision would be made so that judges in one district should not be confined to that district, but could go all over the State, and by thus constantly exchanging places upon the general term bench and communicating their views to each other, they would be able substantially to agree upon all principles of law. And I may as well say here that an attempt was made by the Legislature after the adoption of that Constitution to carry out that idea. A provision of law was made that the judges should interchange; that they should hold courts in different districts, and for some time that system prevailed in the State. But it was found by the judges that it was an exceedingly inconvenient system for them, and so the law requiring this interchange was repealed, and for the last twelve or fifteen years there has been no such interchange. Judges from the rural districts have sometimes been called to the city of New York to aid in the transaction of business there; but in the country districts this exchange of judges is almost unknown. The judges of the third district confine themselves here and hold their general terms in the city of Albany, and the judges in each of the other districts confine themselves to the districts for which they they were elected, except, as I have said, when they are sometimes called to the city of New York.

Mr. S. TOWNSEND—Will the gentleman allow me to say that I thank him for bringing out this fact? I had expected to hear some of the legal members here who were associated with myself in the Convention of 1846, state to this Convention the fact that the interchange of circuits and opinions between judges of the supreme court was provided for by law, following the Constitution, and enforced, I think, by a phrase in the Constitution itself. I know that it was intended by the framers of the Constitution of 1846 that that should be a part of our judicial system, and I now learn from the gentleman from Essex [Mr. Hale]

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ist the bar of this State are responsible for the repeal of that law; and I desire now to express the belief that if that had been properly carried out we should now not have these complaints of discrepancies between the decisions of the judges of the supreme court.

Mr. HALE—The gentleman perhaps misunderstood me in one respect. I did not say the bar, but the bench.

Mr. S. TOWNSEND—Then so much the worse.

Mr. HALE—I should say, however, that the change effected at the instance of the judges was undoubtedly necessary for their convenience, and not for their convenience only, but that it was absolutely necessary in order to enable them to perform their duties; and I did not mention the fact that that change was made through their influence, with the view of reflecting at all upon the gentlemen who were upon the bench at the time the change was made.

The hour of two having arrived, the PRESIDENT resumed the chair, and the Convention took a recess until seven o'clock P. M.

EVENING SESSION.

The Convention re-assembled at seven o'clock, and again resolved itself into Committee of the Whole, on the report of the Committee on the Judiciary, Mr. C. C. DWIGHT, of Cayuga, in the chair.

The CHAIRMAN announced the pending question to be on the amendment proposed by Mr. Hale, who was entitled to the floor.

Mr. HALE—At the close of my remarks this morning I had come to the consideration of the organization of the supreme court, as adopted by the Convention of 1846. I propose to consider somewhat briefly the defects and evils which I think result from that system. I have spoken of the evils which were predicted; I will now speak of those which have followed. The first result was that instead of one supreme court in this State, we have had in effect eleven courts of co-ordinate jurisdiction, whose decisions are of equal authority, and the decisions of neither of which are authority beyond its district, or more limited locality. We have eight supreme courts, one in each judicial district. We have in the city of New York a superior court and a court of common pleas. We have in the city of Buffalo a superior court. From all these courts appeals are taken directly to the court of appeals. All, as I said before, are of equal authority, and all of them have general terms. Now, under such a system, it is impossible to have uniformity of decision. The gentleman from Rensselaer [Mr. M. I. Townsend] conceded these disadvantages; but he says it is owing to the diversity of the human mind that we cannot have uniformity in the decisions of the supreme court. I shall endeavor to show that a degree of uniformity is not impossible; and that it is the system which produces this intolerable diversity of opinions.

Mr. BARKER—If it does not interrupt my friend, I would like to ask him a question. Will he state how any court can be organized, and where there are appeals, without conflicting decisions.

Mr. HALE—If my friend will excuse me, I will defer answering his question until I come to that portion of my remarks. It has been said that, notwithstanding this diversity of decision, in fact there was no such difficulty to any great extent. I propose to call the attention of this committee to the fact that a difficulty does exist, that it is quite as great as could be anticipated from any consideration or principle upon which these courts were organized. I will illustrate my remarks by an incident which occurred in my practice. I was applied to by a client to know whether he could recover of a common carrier damages for delay in transporting merchandise, sustained by a fall in the market between the time the goods should have been delivered and the time they were actually delivered. What was my reply? I told him that the supreme court in the eighth district had decided, in a case reported in 19 Barbour, in which a very learned opinion was delivered by Judge Marvin where precisely that case came before the court; that he could not recover; that a fall in the market was not an element which could be considered by a jury in an action to recover damages. But I also informed him that there was another decision later than that, in 22 Barbour, in which the general term in an adjoining district came to a directly opposite conclusion; that Judge Smith had, in a very learned opinion, shown Judge Marvin and his associates to be clearly wrong; that his damages could be recovered. Upon that my client's face brightened. But I was obliged to say that still later in Barbour was a general term decision in the same eighth district, in which Judge Marvin, in a very learned opinion, had reviewed Judge Smith's opinion at length, and shown that he was wrong. Now, I live in the fourth district. I have my own opinion about this matter, but I could not tell him how the supreme court of the fourth district was going to decide. Four learned judges in the eighth district had come to one conclusion, and four judges in the seventh district had come to a contrary conclusion. I had my own views as an humble member of the profession, but I could not tell my friend what the law was. My friend from Rensselaer [Mr. M. I. Townsend], and my friend from Saratoga [Mr. Pond], argue that is not an evil. When I asked my friend from Saratoga what he would do in case he found one general term had decided one way, and another general term had decided in a directly opposite way, and there was no decision of the court of appeals, he replied, in substance, that it rather gratified him, and gave him a chance to examine and investigate. If the object of a supreme court is to gratify the ambition of lawyers, or their industry, or love of investigation or comparison, then my friend from Saratoga has a very fine opportunity. I have always supposed that it was desirable there should be some certainty in the law, rather than that the desire of lawyers to investigate and draw independent conclusions of their own should be gratified. I do not think there is much weight in the argument that because a lawyer has opportunity to investigate, and compare views, therefore such a system is not an evil. We have in our reports hundreds

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of cases upon which the law has been decided one way by a general term in Albany, another way in Saratoga, another way in Poughkeepsie, and yet another way in New York. I will venture to say there is no parallel to this in the Union.

Mr. McDONALD—Will the gentleman allow me? I would ask him whether either of those cases were appealed, and if so, when?

Mr. HALE—I will answer the gentleman, that I do not know whether they were appealed or not. I know I could find no decision upon either of those points in the court of appeals, when at the time I speak of I investigated the question.

Mr. CHESEBRO—I can say that one of the cases was appealed, but settled by the parties before argument.

Mr. BARKER—Was the gentleman able to give his client any advice with those two conflicting opinions before him?

Mr. HALE—I was.

Mr. BARKER—I am glad to hear it.

Mr. HALE—I can tell the gentleman what it was.

Mr. BARKER—O, I don't want to know.

Mr. HALE—I advised him, as he was able to do it, to sue and have the law settled. [Laughter]

Mr. BARKER—Very lawyer-like! [Laughter.]

Mr. HALE—My friend on my right [Mr. Beckwith] mentions another instance which came under his observation, of two cases in reference to rolling stock upon railroads, in one of which it was decided to be personal property, in the other, real. One case was mentioned by my friend from Schenectady [Mr. Landon] this afternoon, in his remarks to the committee. It is a very important question, whether the married woman's act, as it is called, abolished the right of tenancy by the curtesy. In the fourth district the general term decided it did; in the first district it has been decided it did not. I do not know how it is in this district. What is the result of such a conflict of decisions in this instance? A man living in one county, a poor farmer, perhaps, loses his wife. When he inquires what his rights are as to the real property which his wife had, he is told tenancy by the curtesy is abolished, and that he has no right to the estate his wife owned in her life-time. His neighbor across the line, in Albany county, for instance, in precisely similar circumstances, is told by the law, as expounded in his district, you have a tenancy by the curtesy; you can have this little farm for yourself for your life, while your neighbor in Waterford must give up his property. Another question which arises frequently and is of very great importance, is the question of the constitutionality of laws. We all recollect how it was when the prohibitory law was enacted. The general term in the fourth district and the general term in one of the western districts decided the law was constitutional. The general term in the second district and in the first district decided it was unconstitutional. The question was finally settled by the court of appeals. But until it was settled, there was a prohibitory law in Saratoga, and none in Poughkeepsie. It is said by the gentleman from Rensselaer [Mr. M. I. Townsend] and intimated by the gentlemen from Ontario [Mr. McDonald], and others, that the court of appeals will settle all this. There are two answers to be made. In the first place, there are many cases which cannot go to the court of appeals. All cases originating in justices' courts cannot be carried to the court of appeals, except by consent of the general term. It is known to every member of the profession, and every man upon this floor, that cases of just as much importance, so far as regards the principles which are settled, arise in justices' courts as in the supreme courts. The principle involved in a five dollar suit in a justices' court may determine the right to a large estate in the supreme court hereafter. In this class of cases there is no possibility of going to the court of appeals, except by consent of the general term. But there is another answer still, and a very conclusive answer to this suggestion that the court of appeals will remedy all this. How large a proportion of the cases decided in the supreme court are taken to the court of appeals? Of the cases which are believed by the counsel, and by the parties interested to be decided wrong how many are carried to the court of appeals? I appeal to gentlemen of the profession around me here whether in one-half the cases or in one-fifth the cases in which they believe they are erroneously beaten they advise their clients to go to the court of appeals after their defeat in the supreme court? And why? Because the risk and the cost is so great. If a man with a case involving two hundred dollars has it erroneously decided, if he goes to the court of appeals he must run the risk of having to pay perhaps five hundred dollars costs of the opposite party, besides paying his own lawyer and the lawyer in Albany for arguing the case. The court of appeals is a fine relief for a poor man who is suffering from an erroneous decision of the general term which may be in conflict with a decision of another general term! The suggestion reminds me of an anecdote told of a modern English judge when he was sentencing a poor man for bigamy. When asked the usual question whether he had any thing to say why sentence should not be passed upon him he replied: "Why, your lordship, it is a very hard case for me; my wife ran away with another man, and left me with a large family of children; I could get no woman to stay with me to take care of them unless I married her." "Why," says the judge, "you did very wrong; you should have brought an action for crim. con. against your wife's seducer; that would have cost you perhaps a hundred pounds. Then you should have brought your bill in the ecclesiastical court for a divorce *a mensa et thoro;* that would probably have cost you two hundred pounds. Then you should have gone to the house of lords and got a divorce *a vinculo;* which would not have cost you more than a thousand pounds. Then you could have married again." "But, your lordship, I am a poor man; I have not ten pounds in the world." "That makes no difference; it is the glory of the English law that it makes no distinction between the rich and the poor." And the poor man was sent to Botany Bay without any further remarks. This sarcasm, applied to the old English law of divorce, illustrates well the relief afforded by the

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court of appeals to a poor man. The relief is there, but it is impossible or ruinous for him to seek it. I disagree with the gentleman from Rensselaer [Mr. M. I. Townsend], and the gentleman from Saratoga [Mr. Pond], that there is any thing just about such a system. The first principle of law is that it shall be uniform. It was said so long ago as the time of Cicero that the principles of law were universal; that they were the same everywhere and in all ages; that they were one, as God, the great source and founder of them, was one. Lord Bacon acknowledged the same principle when he says: "There are in nature certain fountains of justice whence all civil laws are derived but as streams"—though he recognizes the practical modification to which these great principles are subjected by adding: "And like as waters take tinctures and tastes from the soils through which they run, so do civil laws vary according to the regions and governments where they are planted, though they proceed from the same fountains." But there is no occasion for variance in any one State even though it be as populous as New York. We should have a uniform law. Most of the litigation in this State is finally determined in the supreme court. It is not nominally a court of last resort; but practically it is, as I said before, to most men. There is another evil which results from this great want of unity of the supreme court—that is the immense increase of reports. Among the advantages that were claimed for the present system in the Convention of 1846, Mr. Jordan, who was upon the Judiciary Committee, argued with a great deal of zeal that it would put a stop to the intolerable avalanche, as he called it, of reports. He spoke at considerable length, and with a good deal of feeling, of the burden under which the lawyers of 1846 were resting by reason of these numerous reports which were coming in upon them. The gentleman from New York [Mr. Daly], who addressed the committee yesterday, made a statement on this subject. I have investigated it and arrived at a slightly different result. I have looked into the matter pretty carefully and ascertained the number of reports since and before the adoption of the Constitution of 1846. Before, as I make it, there were one hundred and twelve volumes of reports for the whole judiciary history of the State from 1777 down to 1846.

Mr. CHESEBRO—I would like to ask the gentleman if there is any law in this State that compels a man to buy the reports of the supreme court?

Mr. HALE—I am very happy to say there is not. I must add, however, that no lawyer in full practice deems it safe to be without the great majority of these reports.

Mr. CHESEBRO—I do not think he would suffer without them.

Mr. HALE—I think if there was a law by which the whole forty-seven volumes of Barbour and the thirty odd of Howard, and all of Abbott, could be abolished, although I admit there are many learned and able opinions among them, the bench and the bar would, on the whole, have reason for thanksgiving and joy.

Mr. CHESEBRO—So I think.

Mr. HALE—My friend from Fulton [Mr. Smith] hands me a statement by which he makes one hundred and seventy-eight volumes since 1846, and one hundred and fifteen before. There is another evil still, which I think has not been mentioned as resulting from eight district courts. That is the belittling of the judiciary. And when I speak of belittling, I do not mean to say any thing against the character of the judges. My friend from Rensselaer [Mr. M. I. Townsend] and the gentleman from Herkimer [Mr. Graves] seem to see every thing in the present system, to quote from the gentleman from Rensselaer himself, through a rose-colored glass; they can see no imperfection whatever in any man who now sits upon the bench. I am very sorry I am unable to see through the same glass from which they seem to derive so much comfort. It would afford me great gratification if I could concur in their views. I admit that the great portion of the judges on the bench are men of ability, learning, and integrity. I do not admit that this is universally the case. But when the gentleman from Herkimer [Mr. Graves] asks me, or any body else, to point out some particular judge against whom an accusation of unfairness, or want of learning or ability, can be brought, I respectfully submit that he asks a very unfair thing. It would be very unfair for me to particularize any judge who is not present, and say he has not integrity or capacity, or learning or argument. It is enough for us to point out the defects of the system; and when we do that we are not to be charged with making insinuations, or intimations against the character of particular judges. It has been my lot, under the present system, to practice to a limited extent in three judicial districts in this State; and I have had opportunity to know something of the judges in four judicial districts. I can certainly say that many of the judges whose acquaintance I have had the honor of having during that time have been men for whom I have the highest respect; they have been good judges and learned and honest men. But I think I have seen in each of these districts the propriety of a change. Not that many of these judges would do any thing really wrong, or connive at it, but they are on intimate relations with each other, they review each others decisions, a very delicate matter, and seldom reverse them. They sometimes appoint each other referees, and sometimes each other's sons, and each other's old law partners. I speak plainly about these things, because they are matters of common remark. I do not speak of any particular judge; I say it is a not unusual custom, so far as my knowledge and personal observation extends.

Mr. McDONALD—Has not the Legislature provided by law a mode by which the judges are compelled to choose a referee selected by the parties? And how does the gentleman propose to remedy this difficulty?

Mr. HALE—The last question of the gentleman I shall answer when I get to that part of my remarks. The first question I will answer by saying I do not now recollect what the Legislature has done; but I would ask the gentleman, whether, if he was before the judge with business important to his client, and the opposing

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counsel should suggest, he will refer this case to Mr. So-and-so, if your honor please—he being a relative or friend of the judge—whether he would be likely to say: "I must object to Mr. So-and-so, and insist upon some other referee."

Mr. McDONALD—In answer to the gentleman I will say this: that in the trial district in which I practice, none of the judges have sons, except one; and I never knew him to give a reference to that son.

Mr. HALE—I am glad to hear this from the gentleman.

Mr. CHESEBRO — Although I concur with many of the views expressed by the gentleman from Essex [Mr. Hale], I desire him to explain to the committee how he will change this evil of which he complains.

Mr. HALE—As I said, when I get to that part of my remarks I will try to elucidate the subject, It may be it cannot be done, but I think the plan I suggest will do it to some extent. I am now pointing out the evils. I propose to come to the remedy pretty soon. I think these evils may be deemed to exist. I think they have been felt by every practicing lawyer in the State to some extent. It seems to me that the great work before this Convention is to endeavor to give some unity to the judicial system of this State as far as relates to the supreme court, and I may be allowed to say here, Mr. Chairman, that upon that point, with great deference to the character of the distinguished members of the committee on which I have had the honor of being placed, I was unable to concur with the plan which was presented by them. I believe it to be an improvement to some extent upon the present system, but I do not think it is as great an improvement as we ought to make. The plan proposed by the majority of the Judiciary Committee is this: It is to divide this State into four departments, each department containing two districts; eight judges to be elected in each department, four of them to be assigned from time to time to hold general terms. I think that is an improvement upon the present system inasmuch as it is a reduction of these local courts from eight to four. In the assignment of four judges to hold the general term for a lengthy period, I think that it is an improvement, but, as I said before, I do not think it is as great an improvement as we ought to have. It does away with the octagonal court, but it gives us a quadrilateral court, and I am not quite sure but what the evil of conflict of decisions between four general terms thus constituted would be as great as between the eight general terms that we now have, excepting, of course, as the number of the conflicting terms will be four instead of eight. I am not certain whether four general terms, rendered in a measure independent of circuit duty, would not naturally take a little more pride in having their own established decisions than the general terms do as at present constituted. The next plan proposed is that of Mr. Goodrich, in his minority report. Mr. Goodrich's plan is to have three departments: the first and second districts to constitute one; the third, fourth and fifth districts the second; the sixth, seventh and eighth districts the third department. He proposes that there shall be a presiding judge in each department, who shall always sit at general term; that general term shall always consist of five judges, the presiding judge in the department to be one, and two judges from each of the other departments to sit with him, making five, having three general terms. I think that is an improvement upon the report of the majority of the committee so far as it reduces the number from four to three, and also so far as it requires the majority of the court, four out of the five judges who are holding general term to be taken from other localities than those in which they do circuit duty. The great objection is that it still leaves a trinity—if I may be allowed the expression—of our courts, and that there might possibly be a difficulty in obtaining two judges to reside constantly, or nearly constantly, as they will have to in order to hold these general terms, out of their own districts. I would like to hear Mr. Goodrich's own views upon this subject, as I presume we shall in due time. The third plan which has been presented on this floor, and which was presented to the Judiciary Committee, and which I then felt strongly favorable to, was a return substantially to the system of 1821, to have a separate appellate court. I think the proposition has been made in the Convention by Mr. Cooke, to have an appellate court of a certain number of judges who shall be confined to general term duties; to have the number large enough so that it may divide, interchange among themselves and hold general terms in different parts of the State, and to have circuit judges separate and apart from them, who shall do general term duty only. As I said before, I felt very favorable to that plan. I find, however, upon looking at the debates of 1846, that the members of that Convention who spoke upon the subject were almost unanimously of the opinion that it was desirable that the same judges should be employed in circuit and in general term duty I find, too, that among the judges of the State, there is a very general opinion that it is better, that we have better judges by giving them both these kinds of duty. I am not so much impressed with that as many are; but it is certain that the weight of authority and of opinion is that way Mr. O'Conor, in the debates of 1846, maintained that the system of 1821 was in almost every respect a model, and said that its "capital error," to use his own language, was in the entire separation of bench and *nisi prius* duty. From deference to that opinion, which has prevailed so extensively, and been entertained by so many gentlemen of experience in the profession, I have endeavored, in the plan which I have presented. and which will be found in document No. 140, to devise something which would combine, so far as possible, the advantages of the system of 1821 with the system of having judges attend to both circuit and banc duties. And I may mention in this connection, what I omited to state before that in the Convention of 1821 Judge Spencer's plan for judiciary reform was to retain the old bench of five judges, of which he was a member, but to add two or three circuit judges who should assist them in holding circuits and in that duty only, retaining these five judges who did both banc and *nisi prius* duty. I present this

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m with a great deal of diffidence, and no doubt
ny of the details can be improved; but the
n that I have aimed to get at is this: that we
ould have a bench of judges elected—if we ad-
ere to the elective system—by the people of the
ate at large, who should have the main control
f the appellate business of the supreme court,
ho should at the same time perform some circuit
uty, and who should be aided to some extent in
eneral term duty by the circuit judges in re-
ion. But, of course, if the plan were adopted the
etails would have to be settled by the Legislature;
ut my intention is to give the judges elected by
he State at large the bulk of the appellate busi-
ess, and the circuit judges elected by the people
f the respective districts the bulk of the circuit
nd special term duty. I have in this plan, for
he purpose of distinguishing those elected by the
people of the State at large from those elected by
he people of the several districts, called the former "judges" and the latter "justices." Of course I should be in favor of applying to their election the principle of minority repre sentation—if I may so call it—the principle of having each elector vote only for a portion of the judges, which we have adopted in the case of the court of appeals; but the plan does not of course depend upon the mode of election or apportionment. In addition to those twelve judges my plan proposes four justices of the supreme court in the city of New York, and two in each of the other judicial districts of this State which are to remain as they are now. The two gentlemen from Ontario [Messrs. Chesebro and McDonald] have inquired, and also the gentleman from Chautauqua [Mr. Barker] how I proposed to cure the evil of conflicting decisions. By looking at the second section they will see what my proposition is. It is that there shall be held once each year a State term of the supreme court, for which seven of these judges shall be assigned, four of them constituting a quorum. I do not propose that there shall be any appeal from the general term to this State term, nor from the circuit court directly to the State term, but that they shall hear such causes as any general term or as the Legislature may direct to be heard there. There are but two classes of causes that now occur to me which should be sent to the State term. I would provide by law that no law of the State should be declared unconstitutional by any general term of the State court. I provide in my plan for general terms to be held as now in the different districts by not less than three judges, or two judges and one justice; but no justice to sit at general term in his own district. I would have no law of the State declared unconstitutional by the general term, but I would provide that if the general term should come to the conclusion that the law was unconstitutional they should suspend judgment and direct the case to be heard at the State term, and if it was there decided to be constitutional, that is the law of the State until it is reversed by the court of appeals.

Mr. COMSTOCK—I would like to ask the gentleman from Essex [Mr. Hale] whether he would give power to a single judge holding a circuit to pass upon the constitutionality of a law.

Mr. HALE—My plan does not provide for that. I merely said what legislative provision I would be in favor of to make effective the proposed constitutional provision. That would be a matter for future consideration. I do not know that there would be any harm in providing that if a circuit judge deld a law to be unconstitutional an appeal should be directed to the State term.

Mr. COMSTOCK—I will ask if the humblest magistrate in the State, the justice of the peace, does not consider it in his power to declare a law unconstitutional.

Mr. HALE—It undoubtedly is in his power. Practically I have never known a justice to assume to decide a law to be unconstitutional.

Mr. CHESEBRO—He might.

Mr. HALE—He might unquestionably.

Mr. BARKER—Would the gentleman allow the supreme court sitting at chambers or special term to grant an injunction against carrying out an act that was apparently unconstitutional, and wait for the supreme court?

Mr. HALE—I would most certainly give him that power. But it is the final judgment that I would postpone until the decision of the State term. I am merely stating what legislative action I would recommend to secure advantage from the proposed State term. Of course that is a matter of detail. I would not, if I were to suggest any law upon this subject, provide that a law which a magistrate deems to be unconstitutional should, notwithstanding, be allowed to be enforced. I would give him power to stay action on it until there should be a determination at the State term. Another case, which I think is very important, is this: when a general term should come to a conclusion directly adverse to a reported decision of another general term, I would have them, instead of announcing their decision in conflict with that, refer the matter to a State term and settle the law for the State. And another feature of the plan which I have offered, I would call the attention of the committee to, which is:

"Provision shall be made by law for designating one of said judges as chief judge of said court, who shall preside at the State term, and for designating what judges and justices shall hold general terms, special terms and circuit courts, and preside at courts of oyer and terminer; and subject to the provisions of this article, any judge or justice of said court may hold circuit courts and special terms, preside at courts of oyer and terminer, or sit at general term in any county."

I would give authority to the Legislature to provide for the designation of particular judges to hold a particular kind of court. There is one evil with which I presume all gentlemen who practice in the country are conversant. In causes which are called equity causes it is almost impossible to get a hearing before a judge of the supreme court. It is not so, perhaps, in the first district, because they have a special term for the hearing of issues to be tried without a jury, and I believe they have also in Westchester and Kings counties: but throughout the rest of the State there are no special terms designated for the trying of issues without a jury, and the result is an evil which I presume all our country lawyers have felt that it is almost a necessity that there should be a

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reference of all but jury cases, and the parties be thereby subjected to great expense.

Mr. E. A. BROWN—So far as the fifth district is concerned, we have special terms. I understand that in the fourth district they have them oftener than we have.

Mr. HALE—In the fourth district they have special terms at the justices' chamber every fortnight, but for motions only, not for the hearing of trials. Of course, to take witnesses from distant parts of the district to the places where these special terms are held would be almost impossible. That, of course, should be left to the judiciary act, but I would provide that at least one special term for the trial cases without a jury should be held in each county every year. I think it is due to the profession that they should be empowered to bring their equity causes to a trial before a judge, and not be compelled to go before a referee. I do not submit this plan, Mr. Chairman, with confidence. The idea is one regarding which I have conversed with a great many prominent lawyers in the different parts of the State, who have concurred with me in my views, and considered a plan like it as practicable and desirable. It may be that the committee will think otherwise. If so, I shall most cheerfully acquiesce in that decision, and shall concur in any plan which will tend in any way to obviate this great difficulty of which I have been speaking, resulting from the present division of the supreme court into eight independent local courts.

Mr. McDONALD—In answer to the many theories, I propose to show the results of actual experience, and thus judged, I maintain that the absolute success—not theoretical, but the absolute, practical success of the judicial system of the State of New York for the past twenty years is as great as the success of any other judicial system for the same length of time in any State or in any country. Experience has shown three defects, and hence there are three changes that should be made in order to make it as perfect as any known system of judiciary can be. These three defects were referred to by the gentleman from Essex [Mr. Hale]. They are the contradictory decisions of the supreme court, the want of sufficient force to do the business, especially in the supreme court in the first district and third, allowing a judge to sit in review of his own decisions. If by any means we can remedy these three defects, we will have a system which in other respects has been shown by experience to be as good as any established, and if these defects are remedied we shall have a system of which this State will be proud. In regard to the practical results of the mode of election and the term of office for the past twenty years, especially of the supreme court in this State, I refer to the record. I speak not of individual judges—it would not be proper to speak of them here, but it is proper to refer to the list of judges elected under the old Constitution and under the present Constitution, and take them in their aggregate and I fear not to make a comparison. I know that gentlemen talk about Justices Kent and Spencer. There were other justices. There were Justices Sutherland and Whittlesey. They were good and honest men, worthy citizens and able judges, but we seldom hear their names mentioned by those who are so eloquent in praise of the old judiciary, and so it is in regard to other justices. Character and reputation of distinguished men, especially after death, like a good oil painting, improve by age. The halo of years envelopes it, and distance of time lends enchantment to the view. We forget their faults, if they had any, and the luster of their virtues brightens. Not only length of time produces this result, but often and in the aggregate always want of personal knowledge and acquaintance has a like effect. We hear of the great men in the Senate of the United States and in the House of Representatives and when we go there and personally see them we find them still human and mortal. Before we go we may suppose that those sixty or seventy senators, and the House of Representatives are the greatest men in the United States, but when we go there we find they are human, like all other men. They have their habits, and in the aggregate are not so great as we thought. We are disappointed, and thus it is with all bodies in which are men of character and public reputation, not excepting, and I had almost said, especially this Convention. There is still another consideration. Reputation depends fully as much upon comparative merit or contrast, as upon absolute superiority. The extreme of this was with the ancients. On account of their general ignorance their great men are handed down to us as gods. The stars are only visible and beautiful because of the darkness which surrounds them; and so with regard to great men—their reputation depends more upon the worth and abilities compared with the average condition of the people of their time. As the splendor and brightness of the parabolic head light of the locomotive is only produced by the darkness about it and is diminished by the rising light of coming day, so the reputation and luster of the great and good in any age are less prominent and marked on account of the increased diffused light of general education and information about them. But, as we have said before, when we are referred to the former judiciary—to the judges of former years and systems, only a few of the most distinguished are mentioned, and the reputation of the others is not inquired into—those judges who, though honest, and who did their duty, were unfortunately—I do not say incapable of doing their duty—but were not as capable as those other great men to whom we are so often referred. Now, let us look at the list of judges. Take the judges under the first Constitution. I refer to the Civil List of the State, in which book they are all recorded. Under the Constitution of 1821, we are always referred to John Jay and to James Kent. Besides those we find the names of John Lansing, Jr., and Richard Morris, and Morgan Lewis. Although these men were able and great judges, do you ever hear any reference in regard to them? Take the circuit judges; we have Robert Yates, John Sloss Hobart, John Lansing, Jr., and so on through the list. In the glorification of the judiciary of olden time, do you ever hear over five or six of the most distinguished referred to? When they refer to that great judi-

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diary of the olden time they point to Ambrose Spencer, to James Kent and John Jay; but do you ever hear in a speech in regard to and asserting the superiority of former systems of judicature, the name of John Sloss Hobart, Robert Yates or John Lansing, Jr.? I have no doubt that those were good judges; that they were capable; that they were honest, but they were not as learned and as capable as those whose names are so frequently mentioned, and the halo of these is cast over the whole. Thus they would have you believe when they cite Ambrose Spencer, James Kent and such men that all their brother judges were like unto them. When you come down to the judges under the Constitution of 1821 take the chief justices. There are four judges that are well known and they are always named. Take the other justices. We have Marcy, Sutherland, Nelson, Bronson, Cowen, Beardsley, Jewett, Whittlesey, McKissock. Now, with regard to Whittlesey and McKissock, they were honest, capable judges, upright and good men; but do you hear any thing of them now when the old judiciary is glorified? When they talk of the old court they talk of Judge Marcy, Judge Nelson, Judge Bronson, and that is very proper, but the trouble about it is they only cite the most distinguished judges, and would have the people think the court was composed of all such men, while the weakness of human nature does not allow that all should be so great men. Take the circuit judges. We have Edmonds, Kent, Betts, Emott, Strong, etc. When they talk about that bench you hear nothing about Throop, nothing of Mosely, of Beardsley, of Skinner; yet they were good judges—they were honest, upright, capable judges, and they did their duty well. But there happened to be among them a judge who had a better reputation, who was more brilliant if not more able. I do not know that he was any better. I am only speaking of general repute. These gentlemen were before my time. They talk about James Kent and John W. Edmonds, and thus of thirty judges you will hear only about six of them named. Thus, when they make glowing speeches about the judges they mention the six and they would make you believe that all had the same reputation and ability. So, when they refer to England, and her judiciary, they will mention half a dozen names, and will cite these most able and distinguished judges to you as the exemplars of the whole. Let us come down to 1846, what is the result? I submit that if there was any difference in the judges of 1846, in office, the people made a good selection therefrom. Look at the list. They took Bronson, Duer, Edmonds, Denio, and others like them. All I claim is that in making their selections they made a good selection from the judges then on the bench. Let us now look at the aggregate result of the operation of the elective system since 1846. Take the court of appeals, what is the result? In the court of appeals we have had fourteen different judges, including the lately elected judge we have had fifteen. We started with four, six have resigned. Thus the people were compelled to select ten judges; and they have selected only four more than they were compelled to. Look at the list, and without saying any thing in regard to any particular member, I fear not to compare the court of appeals of the State of New York, as an aggregate, with any list of judges for the State of New York or any other State, for the same length of time. Even under the unfavorable circumstances of close scrutiny, personal acquaintance, and general intelligence before referred to. We talk not about judges as individuals. Take the list as you find them as recorded, and when you read them over I will guarantee that any man will say that the people, in the twenty years that they have had the choice, have made as good, if not a better choice than any appointing power ever did. And as regards the appointment to fill vacancies since 1846, I will submit that the appointment of Samuel A. Foote, from my own village, was every way worthy. He was a man of great ability and great learning, but by the change in politics he was succeeded by Alexander S. Johnson, a man of no less ability, chosen by the people. Let us now look at the elections for the supreme court. There have been one hundred and nineteen choices made. At the first election thirty-two were chosen. There have been ten elections since of eight members at each election, making 80, and seven extra judges in the first district—making in all one hundred and nineteen. There have been actually selected eighty-seven different judges. There have died in office ten, resigned six—making sixteen. Thus that number have been appointed, so that the people have actually selected seventy-one different judges. They selected thirty-two at first, and the aggregate makes seventy-one. There have been in service, re-elected since 1846, five judges. They are William B. Wright, Charles Mason, Thomas A. Johnson, Richard P. Marvin, Henry Welles. I submit whether the people have shown want of discretion, whether the people have been mistaken in choosing these five men continually for over twenty years. Since 1846 there have been twenty-eight judges re-elected. And I come now to the practical answer of experience to the argument in favor of ineligibility to a second term. We have heard this theory here ably advocated, but I submit the theory is denied by the practical results of actual experience. It is argued that a judge should be independent. Independent of what? He should be independent, they say, of the people that appoint him, of the source from which he is to get a re-election. That may in theory appear to be an evil. But there are greater evils. All are naturally lazy. Man naturally has many habits, and if you put a man where he knows he has his position for life, unless he is impeached (I speak not against any particular man), and they do not, some of them, get lazy, and care little about their work, and are not as good judges as when they first commenced they will prove themselves the most remarkable set of men that were ever seen. I submit, judges are human, and you must put them in a position where humanity will be in check. Where you elect them every eight years they do remember where the power is that is to re-elect them, and they do those things which naturally would bring a re-election. What further do they say? They allege that judges make decisions to

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secure the support of men of influence. But what is the result? It is this, that out of the seventy-one judges, the people have re-elected twenty-eight; and I submit that it would be difficult to make a better choice in the aggregate. I refer to the actual trial of the plan for twenty years. The names of those who have been rechosen by the people after trial, are as follows: David P. Ingraham, Josiah Sutherland, Selah B. Strong, John W. Brown, John A. Lott, William B. Wright, Ira Harris, Malbone Watson, Henry Hogeboom, Alonzo C. Paige, Daniel Cady, A. B. James, E. H. Rosecrans, Platt Potter, Daniel Pratt, William F. Allen, Joseph Mullen, William H. Shankland, Hiram Gray, Charles Mason, Ransom Balcom, Thomas A. Johnson, Henry Welles, E. Darwin Smith, James G. Hoyt, Richard P. Marvin, Levi F. Bowen, James Mullett, Noah Davis, Jr., James C. Smith, LeRoy Morgan. I point to that list as a practical denial of all theory as to the impropriety of allowing judges to be re-elected; and I submit that the people of the State of New York have made a better selection, on the average, than would, in all probability, have been made by any appointing power.

Mr. HALE—How is it with the judges who were not re-elected?

Mr. McDONALD—Many good judges were not re-elected; but I am now answering the argument that there should be no re-election, because by re-election you get poor judges, figuring politicians, and I am in answer trying to show that in fact, by actual experience, the re-election by the people secures the best judges. I submit if there be any difference between the seventy-one judges, those twenty-eight are not below the average. Gentlemen do not wish any judges re-elected, they say all the politicians will get in office. That is the claim. Show me the politician in that list that has been re-elected. This is not theory. This is absolute trial for twenty years of allowing the people to elect and re-elect: who are so easily deluded, and do not know how to choose a judge. I now come to another view, and that is the comparison between appointment and re-election of judges since 1846. There have been appointed in this State the following judges that the people have afterward re-appointed and re-elected: Augustus Bockes, James C. Smith, Levi F. Bowen, Noah Davis, Jr., James G. Hoyt. These five have been appointed and afterward elected. I submit that people were not unwise in thus re-affirming the Governor's appointments. I come now to a test that I wish to call attention to because it applies to the city of New York as well as elsewhere. I hold before me a list of all judges that were appointed since 1846 and not afterward elected, and the name of the judge that was elected in the place of each one. Let us see if it shows any want of competency in the people to choose, and whether the Governor and Senate, or the people are the most liable to mistake. The first appointment was James G. King, Jr., of New York city; in his place James J. Roosevelt was elected. The next is Edward P. Cowles. He was appointed twice. He was succeeded in the first place by Henry E. Davies, now of the court of appeals, and in the second place by Daniel P. Ingraham.

Mr. SILVESTER—Does the gentleman claim that Edward P. Cowles was not a good judge?

Mr. McDONALD—No, sir; but I claim that if there is any difference between the choice of the Governor and the choice of the people, that the people made at least an equally good selection. Not that the Governor has not made a good choice. I say nothing against individual judges, I am taking class by class. I am examining the result of experience by the mode of appointment and by the mode of election for eight years, and re-election, and while I say nothing against Edward P. Cowles, I submit that Henry E. Davies and Daniel P. Ingraham are his equals, in reputation, at least. The next is Charles A. Peabody, and he was succeeded by Josiah Sutherland. I think if there is any difference in this instance it is in favor of Mr. Sutherland. The next was Benjamin W. Bonney, and he was succeeded by George G. Barnard, and it is claimed by some that this was not the most discreet choice. I know nothing about it, but if it be so it is the only mistake that occurs on the list. The next was Gilbert Dean, and he was succeeded by James Emott. The next was Lucien Birdseye, succeeded by John W. Brown. The next was Deodatus Wright, succeeded by Wm. B. Wright. The next was Levinus Monson, succeeded by Ransom Balcom. The next was Henry W. Taylor, succeeded by Theron R. Strong, and I do not think that any injustice is done to Henry W. Taylor, in saying that Theron R. Strong was his equal as a judge. Without saying a word against any individual I submit that the choice of the people is equal in the aggregate, if not better than the list of the appointments during the same time. Here is the result of our new system. The people had no experience before 1846. They had never been allowed in this State to select judges. The Governor and Senate had selected them ever since the State had been organized, and if experience is worth any thing, other things being equal, the Governor and the Senate ought to have been better able to select judges, but the list shows that they are not. Let me now call attention to another matter. It does not generally happen that a Governor selects a judge from the political party in opposition to him. By appointment of judges their choice is confined more strictly to parties than by election. If you look over the list of elective judges you will find more judges elected by the people against their political majority, than you will ever find appointed. In the district from which I come we have had two—Samuel L. Selden, and Theron R. Strong. Here we have two cases, and I understand there are cases in other districts; and I venture the assertion that when you look at the aggregate you will find that the preference of the people, on account of political considerations, in the selection of judges, has not been so strong as the preference of the Governor and the Senate. They stick closer to political ideas, and do not as easily yield those political preferences in selecting a judge.

Mr. RUMSEY—Does not the gentleman know that it is a fact that in the district in which he resides, the bar, and not the people at large, have uniformly nominated the judges, and they have got good ones?

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Mr. McDONALD — Yes, sir; and I suppose that will be the fact so long as there are lawyers and judges; but if the bar unfortunately nominate a judge not so well qualified, I think the people will right the matter and elect the better one, as they did in our own district in selecting Judges Selden, and Strong. Here the lawyers were wrong, the people right. That is the result of the system, and it seems to me that when eminent members can rise here and point to some great names in English history, can cite you to Lord Mansfield, Hale and Bacon (may the *Lord* save his character)—and all those various Lords, yet when you come down to an actual test, when you leave theory and refer to facts you will find that theories are contradicted by fact, and that the mode of electing by the people and for eight years has proved to be as good if not the best mode that ever was tried.

Mr. AXTELL—I would like to ask the gentleman if there is any proposition before the committee for changing this system from election to appointment?

Mr. McDONALD—No, sir; but it is simply because those in favor of selection by appointment do not see fit to put that proposition forward. I submit it to the minds of the great majority here, who are in favor of the life tenure and the elective principle, if they do not believe in the old system by appointment, and if their argument here is not founded upon and would not lead them to that result?

Mr. VAN COTT—If no one dares to favor the system of appointment, is it worth while to discuss the merits of the system?

Mr. McDONALD—It is so far as this: that the same arguments that are urged for the system that they do not want they admit here bears out the system of appointment, which they would prefer. That is the trouble with them. Their secret wish is appointment, but they only argue in favor of long terms and ineligibility, and we offset their arguments by showing that the practical result has not been so good as the result by election. But if I have succeeded in proving that for twenty years past the mode of election by the people is equal to the old mode of appointment, I have accomplished my purpose. With regard to appointment, that distinct question is not here, but it is connected: it has been discussed by both sides, and it therefore illy becomes gentlemen, at this late hour, to refer to the fact that that question is not directly in issue. Let us now consider how to remedy the difficulties that exist. They do not arise from the short term, nor from the fact that the judges are elective. The gentleman asks me if I think eight years is the best term. I think it has proved to be a good limit. I find this, at least: that by re-election we get no poorer judges. It is desirable that the term of office of the judges of a court will be such that they will be long enough together so that their minds will naturally act together. In the court of appeals the necessity is greater. It is the court of last resort, a court that is expected to make uniform decisions; and for that reason their term of office should be longer than that of the supreme court. Eight years for the supreme court has proven to be about right. Another thing. There have been, it is said, two or three failures in the choice, on account of political elections. As I understand, in the city of New York, it is alleged, there have been only two political elections. But the city of New York is exceptional as to its political condition when compared with other portions of the State, and if the people of the city of New York want their judges appointed, let us yield it to them. But they should not force this upon the rest of the State who do not want it. If their peculiar situation is such that an appointive system is better for them, we will grant it to them. I am satisfied that, except in the city of New York, the system we have works well and better in the aggregate than any other system that we have had. The system of the minority report I believe will remedy the evils of the present system with the least change. The proposition of the minority is this: that this State be divided into three departments; that the first and second judicial districts as now constituted shall be the first department; the third, fourth and fifth the second department, and the sixth, seventh and eighth districts the third department. I favor this system for this reason: that it accomplishes the result desired; it remedies the evils of which we complain without disturbing the present system. We have a system; we are all accustomed to it. The people are accustomed to it; and it is, above all, desirable, if we can, to remedy the defects and keep as close as we can to the present system. This, I think, does it. These judges are to be elected by departments. When you put the second judicial district within the city of New York, I doubt if any such judges as those of which we hear complaints (if they be true) will be nominated, because, in the second district, there will be men enough who are not bound by party ties as strongly as many in the first district are at present.

Mr. YOUNG—Who are the judges in the city of New York so much complained of?

Mr. McDONALD—I can only tell you by reputation. I understand that Judge Cardozo is said by some persons not to be as good a judge as Judge Ingraham nor Judge Barnard, as good as Judge Sutherland. Elect by the people for a short term in the second district and first district united in one, and you will have a district in which these so called wrongs, if they actually exist, will not be perpetrated, and in the other district it will remain the same. The judges are the same in number. You increase the force in the first district by four judges, and in the rest you will have just the same as you do now. For myself I am in favor of continuing all the judges of the court of appeals and supreme court in office. There are eight judges just elected, five of whom have been elected without opposition. In the third, fourth, fifth, sixth and seventh districts, the judges were elected this year without opposition; as regards the first district I know nothing about it. I understand that the choice between the judge going out and the judge coming in is not satisfactory to all the people, but as to the other districts I think all will be satisfied and will say that the selections have been good. As to five districts as I have shown, they have been

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twice certified by the people, and thus certified I think it would be bad grace for this Convention to legislate them out of office. I call upon those gentlemen, who have expressed such anxiety that judges should not be put out of office and hence favor long terms, to see to it that they do not put these judges out of office in less than two years from the time that they were elected. The principle might as well be applied to the judges now hardly in their seats as to the men who have been in their seats for fourteen years. A man who has been tried eight years and certified by the people, after that ought not to be turned out. For these reasons I think above all things this Convention should not be guilty of defeating the choice of the people and turning thirty-two judges out of office, and that the gentlemen on the other side should be the last to favor any such plan. By the method proposed in the report of the minority, we would in a great degree get rid of the contrariety of decisions which is complained of in the eight districts. We would have a general term of five, and that general term made up of two from each of the other departments, with the presiding justice of the district in which the court is held. You thereby have a State court, and although there are three general terms, yet as they are composed of judges of each district, I submit that contradictory decisions would not be likely to be made. It seems to me therefore that the plan prepared by the minority would accomplish the desired result. It is a plan by which the judges shall not be removed, as in the plan proposed by the gentleman from Essex [Mr. Hale]. I hardly see how the difficulty can be avoided upon that plan. It seems that by his plan the State court would be more ornamental than useful in this court of twelve judges of whom seven are required to make a quorum, while in the other court the number is seven and the number required for a quorum is only five.

Mr. HALE—Will the gentleman allow me to correct him? If he will look at my amendment he will see that it is provided that the quorum in the court shall be four.

Mr. McDONALD—I was wrong in that regard and stand corrected. I am, however, not wrong with regard to the number of judges, and I do not see but the State supreme court under this system would be a mere figure-head after all. He has yet the general term, from that he goes to the State term, and then he goes to the court of appeals Now, by either of the other plans if you pass the general term you go immediately to the court of appeals and get your final decision. I am therefore in favor of the plan of the minority for the reason that it cures all the evils of the present system with the least possible change.

The question was put on the substitute offered by Mr. Hale and it was declared lost.

Mr. SPENCER—I offer the following amendment:

The SECRETARY proceeded to read the amendment as follows:

Strike out of the section all after the word "law" in line three, and insert as follows:

"The State shall be divided into eight judicial districts, of which the city of New York shall be one, the others to be bounded by county lines and to be composed and equal in population or nearly as may be. There shall be four justices of the supreme court in each district, and as many more in any district as may be authorized by law. The justices of the present supreme court shall be justices of the supreme court hereby established, during the term for which they are respectively elected. Provision shall be made by law for the election of justices of the supreme court by the electors of the several judicial districts."

Mr. SPENCER—Mr. Chairman, I have very carefully considered the several plans for the organization of the supreme court which have been presented to the committee, and am compelled to say, that so far as I can discover, not one of them seems to be an improvement upon the present system. And unless there is something which shall appear to be a clear and satisfactory improvement upon the present system, I think we ought not to make any change. The judicial business of the State has been carried on under the present system for twenty years, and has become adjusted to the present organization of the court, and it seems to me that it would be entirely unwise to make any change, unless there is some great evil to be avoided, or some very great advantage to be gained. The State has been organized into judicial districts, and there does not seem to be any reason for present change in the adjustment of those districts. Centers for doing the business of the general terms have been established in all or nearly all of them, and at very many of those centers libraries have been located by the authority of the Legislature, for the convenience of the judges and of counsel. I do not know that any plan proposed here would necessarily cause a departure from the present arrangement in that respect, but it seems to me that a division of the State into departments instead of districts, and the necessity of organizing a different plan for holding the general terms of the supreme court would necessarily lead to a departure from the present mode of doing business, and the necessity of locating the business at points different from those at which it is located at present, all of which would result in very great inconvenience. There have been several evils complained of as belonging to the present system; but there has been no mode proposed, at least no satisfactory mode, by which more than one of these evils can be avoided. The great difficulty which seems to be at present in the minds of the most of those who have discussed this subject is that there is a conflict of decisions in the supreme court; but it seems to me that no plan has been presented adapted to avoid that evil. I think it entirely impossible, under the present proposed structure of the supreme court, to devise any plan by which this difficulty will be avoided. You cannot have in the supreme court as it is proposed to be constituted by any one of these systems, that unity and permanency which are necessary to secure uniformity of decisions. There must of necessity be more than one supreme court; and when there is more than one supreme court, the several

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courts being composed of different men, their decisions will necessarily be conflicting. We have to look, where we ought to look, to the highest tribunal of the State to settle the law of the State. We have had a considerable variety of local tribunals, and yet nobody has heard a complaint that the decisions of the superior court of the city of New York were in conflict with the decisions of the supreme court, or that the decisions of the court of common pleas of that city were at variance with the decisions of the superior court; or that the decisions of the superior court of the city of Buffalo were in conflict with the decisions of the supreme court in the same judicial districts. But we have all these local courts, and however the supreme court may be constituted they will still be subordinate local courts, and consequently their decisions will be peculiar to the localities in which they are made. So that so far as that evil is concerned, it is one that cannot be avoided The other evil which is spoken of is that judges sometimes sit in review of their own decisions I do not regard that as so great an evil as other gentlemen here seem to think it, for where a judge sits in review of his own decisions there are always at least two other judges who, if he is wrong, ought to control him. But this evil is one which may be avoided in the present system, as it will be no longer necessary that any judge of the supreme court shall sit in the court of appeals; there will be four judges in each judicial district who may hold the general term, and the business may be so regulated that no judge shall sit, or at least that no judge shall have a voice in the decision of a case, which was heard in the first instance before him. And the difficulty may be avoided by constituting a general term composed of three or four judges, selected from the judges of the State at large, to hold the general terms and sit permanently for that purpose.

Mr. E. A. BROWN—I find, sir, in glancing over the discussions that have taken place in the previous Conventions and in other bodies, in relation to the judiciary of this State, that there has been no time in which it has not been easy to find fault with any existing system. As long ago as 1812 I notice that a modification of the system, or rather an addition to the number of judges was proposed by the Legislature, and the law encountered the veto of the Council of Revision. Complaint was then made that that court, consisting I believe at that time of five judges, serving as circuit judges and as the supreme court, failed to keep up with the business of the State. And at that time the people of this State could not have exceeded a million in number, only about twenty-five per cent of our present population. In 1821, and before that time, complaint was made against the old supreme court, mainly by distinguished politicians, that the judges were political judges, and charges were made against them on that score, that they were giving their attention to political affairs, and lending their influence to political schemes, and in some instances to pecuniary schemes inconsistent with their position and their character as judges; and complaint was also made that the business was not kept up. In regard to the court of chancery, too, at that time, although Chancellor Kent kept up his business, it was said that the business of the court was increasing so largely, and solicitors from all parts of the State were being admitted to that court to such an extent, that very soon it would be impossible for the chancellor to discharge the duties of his office—to keep pace with the accruing business. Other complaints were also made. A charge was made that the judges spent their time in electioneering. The old supreme court was dispensed with, and a new supreme court, consisting of three judges, was established. Eight circuit judges were appointed to hold circuits and preside in courts of oyer and terminer, also possessing powers as vice chancellors. That was the system from 1822 to 1847. Complaints were next made of that system, and one manifest and universal complaint was that one chancellor who had eight or nine vice-chancellors to assist him, was unable to perform the business of the court. And in 1847, the calendar of the court of chancery contained according to my recollection, a thousand or more causes, and it took several years to reach a case upon that calendar. So of the supreme court; its business was entirely beyond the power of the then existing judicial officers to transact it promptly. In 1840 the population of the State had increased to about two millions and a half. In 1846–7 it had increased to very nearly or quite three millions, with a like increase of business, and complaint was made of that judicial system, as wholly insufficient, and it was set aside by the Convention of 1846. The judicial system established in 1821 embraced not only the court of errors, the supreme court, the court of chancery the circuit courts, the vice-chancellors' courts, and the courts of oyer and terminer, but also county courts in each of the sixty counties of the State, making some three hundred judges, and in 1846 a change was made conferring upon the supreme court organized under the Constitution of 1846, all the original civil business that was formerly transacted in the courts of common pleas. The change put into the supreme court the business that was formerly transacted in the court of chancery, and also in the supreme court including the vice-chancellors' courts and the circuits Now, of course, that was an experiment, a new system. The court was organized in eight districts, four judges in each district, except the county of New York which had five. I desire now, to call attention for a moment to this court to see whether it is justly liable to the charges that are made against it—for I repeat that it is very easy to make charges and complaints as to the supreme court as organized under the Constitution of 1846. I ask what was desired from it, and what was expected from it? Why, sir, that it should do the business that had been done previously in the courts of common pleas, all the original civil business in these courts; it was also to take the business of the court of chancery, transact that, and the business of the eight circuits, and the eight vice-chancellors' courts and transact that. Then we had the Code established under a requirement of this Constitution of 1846. And here let me digress a moment. Complaint is made of the number of books of reports that have grown up in the profession since 1846. Their name is legion, and to a great extent they have grown out

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of the interpretation of the new laws, consequent upon the changes made and provided for by that Constitution and in the settlement of the practice (so far as it has been settled) under this Code of Procedure. But let us see whether this system of eight districts, and, as it is called by gentlemen, eight supreme courts, is justly liable to the complaints that have been made against it. Has it done the business? As a general thing, sir, I say it has. It has done its own proper business, and the business that was transacted in all those other courts; and transferred to the present court, and outside of the city of New York, I do not understand that there is any considerable complaint that the supreme court judges have not heard and decided with reasonable promptness, all the causes that have been brought before them—that they have not been competent to do it, or that they have not done it. The number of those causes I am unable to state, but I shall guess at it for the purpose of seeing how much business, so far as the number of causes is concerned, has been transacted. That court has taken up and done the business of all these other courts, and speaking generally, in every district throughout the State the calendar is clear or nearly clear—every circuit calendar, except perhaps in a few large places, is substantially cleared up. And, sir, so far as I know, it is not charged that these courts are not able to do and have not done all business which is not strictly jury business. They have held special terms in all the counties where issues are joined which parties have not seen fit to try before a jury, have been tried. Now, complaint is made further that we have had diversity of decisions in different portions of the State in different districts. I grant it, and I ask every gentleman within the sound of my voice to go into his own library or into the State library and open the first book of the reports of the State of New York he sees and look at the index and see how many cases that have been decided in this State and in England, and in the courts of other States, have been reconsidered, reviewed and commented upon, explained, doubted, and overruled from term to term, from year to year, from generation to generation. Sir, you cannot open a book but what you will find some such cases contained in it. Uniformity of decisions in courts of justice is as inconsistent with the history of the world as uniformity in the appearance of different men's faces or the sound of different men's voices. Chancellor Kent on a certain occasion made a decision in court. The unsuccessful counsellor said, "Your Honor decided the other way last year." "Certainly I did," replied the chancellor, "and I have become entirely satisfied that I was wrong last year, and I now decide in this way." I once had a case in the old supreme court heard at the general term held by one judge only. I depended upon the published decisions of that court, and I cited more than one of them, but notwithstanding he admitted that, the judge said that his opinion was the other way, and so decided, thus overruling previous decisions of the same court. As I have already said, uniformity of decisions can never be had, in my opinion, in any court, for any considerable time. Suppose one court does decide one way and another court another way, what harm? Such differences of opinion are incident to human nature. But gentlemen want uniformity in decisions. I would like to know where they are going to get uniformity in decisions under a new statute such as the general railroad act; an act with provisions so numerous and multifarious and so constructed as to be capable of being interpreted one way by one clear head, and another way by another clear head. Cases arise under this law in different parts of the State at the same time. One interpretation is given to its provisions in one case and a different interpretation in another locality. No uniformity is practicable in such cases. What is to be expected in the way of uniformity in any possible court that you can constitute? You cannot try all the cases in any one court, that is impossible; and you have got to take, in the first place, the decisions of the first court into which you bring your case. I would certainly like very well not to have the same court decide both ways as they did in my case, or what was nearly that, but I had no way to help myself, and one of the ablest men on that bench told me with his own lips, that he changed his vote from one side to the other, "and," said he, "it was a very difficult question, and I do not now know whether it was decided right or not." If you are going to have uniformity of decisions you will have to get something above humanity out of which to make your judges. How will it be with this very Constitution upon which we have spent so much labor, and which we hope to make so deservedly acceptable to the people? We provide here for general laws on a great variety of subjects. When litigation comes up in regard to these provisions of the Constitution and in regard to the provisions of law that are to be enacted under the Constitution, I would like to know how you are going to get the superior court of Buffalo, and the court of common pleas of New York, and the general term of the third and the fifth districts, all to decide alike in regard to the meaning of the Constitution or the scope of the laws enacted under it. Each court will decide one way or the other according to its best judgment, and if another court sees the matter in a different light, and decides the other way, why we have a court of appeals to remove whatever there may be inconsistent in those decisions, and remedy all the supposed mischief. Sir, I do not discover all this mischief that is spoken of here, in the diversity of decisions rendered by different courts. As I have said, you cannot have uniformity in whatever way you attempt to secure it. There is no way to secure uniformity, no way to have one court to try all the cases, but then you must keep the same judges on the bench from generation to generation, and even then perhaps as in my own case, to which I have alluded, the same judge will overrule himself, as he ought to do, if he finds out that he has been wrong. The want of uniformity is incident to all courts in all places at all times, and must be so from the very nature of things. Another suggestion has been made. In the first part of our sitting, we had the story repeated over and over again that our Legislature was corrupt. After a little while

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had it that the canal officers were corrupt, now we have it that the judges are corrupt. I not asserted as a positive fact, but from the most inferences from the arguments that are here, it must be admitted that it has been assumed that corruption exists in our judiciary. We have heard a very learned dissertation, based, so far as it has any force at all, upon the assumption that our courts, as at present constituted, are more or less corrupt, unreliable and untrustworthy; and we have been referred back to Great Britain, two hundred years ago, and one hundred and sixty years ago, when a state of things existed not quite similar to ours, but so far similar as to make it valuable for an argument. We are told that the English judges at that time were corrupt; that their tenures were uncertain; that they depended upon the will of the appointing power or the monarch, in that case, and were under its control for continuance in office, and, as I understand the argument, because they were dependent for continuance in office upon the crown, they were corrupt; and Scroggs and Jeffries and Lord Bacon are referred to as instances of the character and reputation of the judges of England during those years. I simply desire to ask the gentleman who made that argument [Mr. Daly] if he supposes that the judicial offenses of Lord Bacon were the necessary consequences of the mode of his appointment to office, and were not all these supposed crimes and offenses which have been charged upon Lord Bacon the result of the vices of the age and the country in which he lived, rather than the result of the mode of appointment to office? Did England stand then in respect of morals, law and general intelligence of its people as it stands to-day, or as it has stood for the last hundred years? Has the character of the judicial officers of Great Britain improved since that time more than has the general character of the people and of the governing classes of that country? Has the improvement in the character of the judges been more rapid than the march of science, art and general intelligence and improvement in that country? I say no, sir. Why, sir, at the time the gentleman speaks of, the monarch herself had not a knife and fork to eat her dinner with. Up to that time, and at that time, riots, uprisings of the people, religious dissensions and revolutions were constantly occurring in that country. From that time until now there has been a great improvement, but I deny that it has been greater in regard to the character of the judiciary than in all other respects. But, sir, it is said that after there was a change in the mode of appointment and the tenure of good behavior or life tenure was made the rule, the character of the judges improved; and the argument is that the improvement was from that cause, and we are told that we must change our mode of selecting our judges, or at least we must extend the period for which they hold office, if we want to have a good judiciary—if we desire to secure the same good results that have been secured in Great Britain by the change made there. From all this, the inference is plain that these gentlemen believe that we have a corrupt judiciary system, from which we are to relieve ourselves in this way. Now, sir, I deny both the premises and the conclusion; I deny that the judicial system of this State is open to the charge of corruption, or of truckling to popular opinion for the purpose of securing re-elections. The instance is not named where the thing has occurred, and it cannot be named. These gentlemen do not attempt to name an instance, but throughout their remarks upon this question we find a loose, general, unsupported assumption that such is the fact, in regard to our judiciary. Now, sir, I deny it. I say that our judges have been industrious, able and faithful. If they have committed errors, they are human, and all the men in the world are human. For my part I cannot conceive of that state of mind existing in any of our judges which would induce them to turn to the right hand or to the left in their decisions, for the purpose of securing votes; but I say that if such things have occurred under our system, it does not follow that under the appointing system, a judge would not, out of gratitude to those who helped him to get the appointment, swerve from the line of duty to accommodate his friends in this way. I understand that the proposition of the gentleman from Steuben [Mr. Spencer] is substantially to retain the present judiciary system so far as the supreme court is concerned. I am in favor of that proposition. I have seen nothing yet, which to my mind, will secure the people better judicial services, or more prompt discharge of judicial duties. We are accustomed to the present system, and if there evils in it they can be remedied without changing the entire system. One of the faults complained of now, is that the judge who sits at circuit, also sits at general term. At one time this was supposed to be a great advantage to the judge, and I still believe it to be so. I believe, too, that a judge is largely benefited by going about and holding circuits. If he is shut up in general term altogether, in a very short time he will cease to know any thing, except what he reads in books, and he will read always with the same old spectacles, and see nothing but what an "old fogy" can see; but going around holding circuits, and getting a knock here and a knock there, from the counsel on the one side, and on the other, his brain will be enlivened and stimulated, and he will be made to see things more clearly and distinctly than if shut up in his office with his musty old books. I have no desire, sir, to trespass longer on the patience of the Convention, but I do not believe that it is worth while for us to throw by a good thing for something more cumbrous, more intricate and more complex, without any corresponding advantages that we are certain to attain by the change. Our system is complex enough as it is now, but the division of the State into four subdivisions would make it more complex still, and you would have the judges traveling from one end of the State to another, or at least halfway. But as has been said, that experiment was tried and failed, or at all events became unsatisfactory, and as a general proposition I have not a particle of doubt that our present system is as simple, as good, and as efficient as any thing that we can contrive. There is another point that I wish to mention. At every circuit that I have

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attended for a long time, as a general thing, the judge has not assumed to say what the law was in some particular case, but has said, "I will hold so and so, for the purpose of enabling you to get the decision of the general term. This is a doubtful question and I am not certain in regard to it." Thus the judge does not commit himself, and he goes to the general term entirely uncommitted; and in a large proportion of the cases that go to the general term the original decision is of this character. Now, is there any good reason for excluding a judge from the general term bench under the circumstances. But I will not go any further into detail at this time.

Mr. SILVESTER—I move that the committee rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Silvester, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. C. C. DWIGHT, from the Committee of the Whole, reported that they had had under consideration the report of the Standing Committee on the Judiciary, had made some progress therein, but not having gone through therewith, had directed their chairman to report that fact to the Convention and ask leave to sit again.

There being no objection, leave was granted.

Mr. A. F. ALLEN—I move that the Convention do now adjourn.

The question was put on the motion of Mr. A. F. Allen, and it was declared carried.

So the Convention adjourned.

SATURDAY, December 7, 1867.

The Convention met pursuant to adjournment, Mr. ALVORD, PRESIDENT *pro tem.*, in the chair.

Prayer was offered by the Rev. Mr. RAWSON.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. GOULD—I received a letter from Mr. Archer this morning, stating that he is sick, but that he will return as soon as his physician will permit him. Under these circumstances I ask for him indefinite leave of absence.

No objection being made, leave was granted.

Mr. WALES—The chairman of the Committee on Industrial Interests has requested me to make the following report:

The SECRETARY read the report as follows:

The Committee on Industrial Interests, not otherwise referred, respectfully report:

That they have had under consideration the subject of providing for legislation in reference to cruelty to animals, and deem it to be already under jurisdiction of local or general law.

That they have considered the memorials referred to them, asking for laws to equalize the legal interest on rents and loans, and are of the opinion that the question has been decided by action of the Convention upon the article of finance.

That, upon the resolution inquiring whether feudal tenures operate injuriously upon industrial interests in this State, they submit the following amendment, recommending that it take the place of section 12 of the bill of rights:

§ 12. All rents and services upon grants in fee, except to the owners of the reversion of such fee, are abolished.

A. J. H. DUGANNE,
Chairman.
EDW. I. FARNUM,
J. R. ARMSTRONG,
LESTER M. CASE.

Which was referred to the Committee of the Whole and ordered to be printed.

Mr. C. C. DWIGHT—I move that when this Convention adjourn it adjourn until Monday evening at seven o'clock.

The question was put on the motion of Mr. C. C. Dwight, and it was declared carried.

Mr. MERRITT—I offer the following resolution and ask that it be laid on the table:

The SECRETARY read the resolution as follows:

WHEREAS, It is now probable that the labors of this Convention will not be completed before this chamber will be required by the Legislature; therefore

Resolved, That a committee of three be appointed by the President to confer with the committee of the Common Council of the city of Albany in relation to a suitable hall and accommodations for the sessions of this Convention, as voluntarily tendered by the city authorities, and report as early as practicable.

The resolution was laid on the table at the request of the mover.

Mr. AXTELL—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Axtell, and it was declared lost.

Mr. BICKFORD—I offer this resolution, and ask that it lie on the table.

The SECRETARY read the resolution, as follows:

Resolved, That the Committee on Revision be instructed to add to section 5, of the article on the Legislature, its Organization, etc., substantially the following:

"Of the salary provided for in this section, two hundred dollars shall be due and payable on the first day of February, in each year, and the remainder at the close of the first and main session of the Legislature for the year. During said session the roll of members in each house shall be called half an hour after the beginning of each daily session, if the session shall be held so long, and again just before adjournment for the day, and any member who shall not answer to his name on either of said roll-calls shall be deemed absent for the day, and there shall be deducted from that portion of the salary of each member, payable at the end of the first main session, for each day's absence as aforesaid, a sum which shall bear the same proportion to eight hundred dollars as one day bears to the whole number of days which the session shall last."

Which was laid on the table on the motion of the mover.

Mr. AXTELL—I offer the following resolution.

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The SECRETARY read the resolution, as follows:

Resolved, That in the further discussion of the report of the Judiciary Committee, in Committee of the Whole, no delegate shall speak more than once on a question, nor longer than ten minutes.

Mr. COMSTOCK—We have just entered upon the consideration of this great subject. I think it very unwise to limit the debate in the manner this resolution proposes.

Mr. BARKER—I move to lay the resolution on the table.

The question was put on the motion of Mr. Barker, and it was declared carried.

Mr. PRINDLE—I move that this Convention now adjourn.

The question was put on the motion of Mr. Prindle, and it was declared lost.

The Convention again resolved itself into Committee of the Whole upon the report of the Committee on the Judiciary, Mr. C. C. DWIGHT, of Cayuga, in the chair.

The CHAIRMAN announced the pending question to be on the amendment of Mr. Spencer, which the SECRETARY read as follows:

Amend section 6 by striking out all after the word "law," in line three, and insert the following:

SEC. 6. The State shall be divided into eight judicial districts, of which the city of New York shall be one; the others to be bounded by county lines, and to be compact and equal in population, as nearly as may be. There shall be four justices of the supreme court in each district and as many more in any district as may be authorized by law. The justices of the present supreme court shall be justices of the supreme court hereby established during the term for which they were respectively elected. Provision shall be made by law for the election of justices of the supreme court by the electors of the several judicial districts.

Mr. VAN COTT—I am quite willing that this matter should be discussed, but I think it improper that the question be taken upon so vital a point in the present state of the Convention.

Mr. WAKEMAN—This is a very important question, and one which should not be passed over lightly. Let us examine, for a few moments, the objections against the present system so far as regards the supreme court. I have heard but two. One is the conflict of decision. But no plan has been adopted or even proposed which will do away with the conflict of decisions. Of course, by uniting two districts and making them one, the difficulty will be partly, but not wholly, removed. The other point raised against the present system is this: that the judge will sit in review of his own decisions. This is the universal complaint, I believe. Now, have we proposed any plan by which we shall do away with this? I believe we all agree that the system should be amended so that the judge shall not sit in review of his own decision, and that this can be done with eight districts as well as four. What are the advantages of having eight districts instead of four? Every lawyer will understand that it is a matter of convenience that the general term should be brought as near the business portion of the district as possible for the accommodation of the members of the bar. In former times the lawyers of the State were obliged to employ counsel at the seat of government to attend to most of their general and special term business. They could not afford to attend awaiting the disposition of their cases at Albany; consequently the main portion of the business at the general term was done by local counsel here. By the late system, every member of the profession, however humble he may be, has the privilege of appearing and arguing his own cases. Of course he had the same privilege under the former practice, but it was impracticable for him to do so. Now the districts have all been arranged (taking, for instance, the district from which I come) so that members of the bar can go to court with the understanding that their cases can be disposed of by a particular day. They can go to court in the morning, transact their business, and return to their homes at night. So it is, I believe, in the seventh district. What are we to gain by consolidating two districts into one? It is entirely immaterial to me whether the districts are consolidated or not; it is equally convenient for me to attend court either at Rochester or Buffalo. But the question is: what can be gained for the public convenience? If we can gain any thing, by all means let us make the change; if we cannot gain any thing, of course we should not abandon what has worked well, so far, and try an experiment. The proposed change cannot entirely remedy the difficulty arising from conflicting decisions. I apprehend that at the present time the practice is so settled that we are not to have so much conflict in the decisions of the general term as we have had. I believe many of the pending questions are being settled by the court of appeals. I have great doubt that the changing of two districts into one will remove the evils that are complained of. On the subject of a judge reviewing his own decisions, I think there is more suspicion and alarm than circumstances will warrant. I have known many cases where the judge has overruled his own decisions; and other cases again where he has attempted to overrule his own decision when it was sustained by his brothers on the bench. I recollect a case of that kind very well. I know a case where Justice Marvin undertook to overrule his own decision, when it was sustained by his associates. So it is not always true that judges at the general term, when they come to examine their cases, adhere to their opinion at circuit. Yet there is a feeling amongst the profession that a judge who held the circuit has an influence in carrying a case through the general term in the same way in which it was decided at the circuit. I would remove that if it were possible, and it can be done. If you continue four judges as at present, we shall have the force of four during the entire two years. Formerly every second year one of the judges has gone to the court of appeals; consequently we have had but three judges, in point of fact. We can say no judge shall sit in review of his own decision. This will leave three judges to decide cases at general term. The point may be raised, and there may be something in it I conceive, that we have the

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judge who holds the circuit, yet who does not take part in the decision. That may be true to some extent; but he is present. He can do and say all that is on the point to influence the other judges precisely as though he took part in the decision. How shall we get rid of that? There is only one way of doing it entirely, and that is to allow one of the judges to be the circuit judge only. I believe it is said here and generally conceded that it is better the judges at circuit should participate at general term. If that is so, the only remedy we can adopt will be to prohibit the judge from sitting in review of his own decision Unless it is thought best to continue the justices of the supreme court as circuit judges, I shall be in favor of separating them entirely, and making it the duty of the circuit judge to hold circuits, and courts of oyer and terminer, and special terms, if you please to connect with it the ordinary business. Separate them entirely. I am not satisfied that change of districts is called for. Yet the other change is called for. If we provide that the justice who tries a case at circuit shall not sit in review of his own judgments, to a great extent the minds of the public will be relieved of the fear that his influence will be exerted in a wrong direction. Situated as we are, in the particular portion of the State in which I reside, the report of the Judiciary Committee would satisfy us very well, because a single district accommodates us as well as a double one. But it is not so in many other districts. The question is, whether or not, hereafter, we shall permit a judge to review his own decisions. I merely throw out these suggestions for gentlemen to reflect upon, and see whether or not there has been any complaint in reference to the present supreme court. The calendars generally in the rural districts have been cleared in a single week. The general term in our district disposes of the business in two weeks or less. The question is whether or not the speedy administration of justice under the present system is not to be regarded with some favor, and whether we should change it for another system when it works so well in that particular. Great complaints have been made about the court of appeals being choked up with business; and this Convention has been called to remedy it. But of the supreme court there is no such complaint, except perhaps in the large cities. I must say that I incline to the old system so far as regards the eight districts, yet I shall be glad to hear what can be said against it, for I am hear to learn. I want to hear the suggestions of gentlemen on the subject, then I propose to vote upon the best system which shall be devised.

Mr. HALE—I move that the further consideration of this amendment be postponed until Tuesday next.

The CHAIRMAN—This motion is not in order in Committee of the Whole.

Mr. HALE—Is it not in order to move to postpone?

The CHAIRMAN—Not for any definite time.

Mr. HALE—I move to pass it over for the day.

Mr. AXTELL—It is perfectly obvious that no conclusion can be reached in this committee upon any question of importance, and that whatever discussion is had upon this question will have to be repeated in the full body of the Convention. It is for these reasons that I now move that the committee rise, report progress, and ask leave to sit again.

The question was put upon the motion of Mr. Axtell, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. C. C. DWIGHT, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Judiciary; had made some progress therein, but not having gone through therewith, had instructed their chairman to report that fact to the Convention and ask leave to sit again.

The question was put upon granting leave, and it was declared granted.

Mr. PRINDLE—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Prindle, and it was declared carried.

So the Convention adjourned.

MONDAY, December 9, 1867.

The Convention met at seven o'clock, P. M.

Prayer was offered by Rev. JOHN F. LOWERY.

The Journal of Saturday was read by the SECRETARY and approved.

Mr. BELL—I ask the unanimous consent of the Convention to make a report from the Committee on the Manufacture of Salt.

No objection being made, the report was received and read, as follows:

The Committee on the Salt Springs of the State deem it important, for a proper understanding of this subject, to submit a brief statement showing the relations which the State sustains to these springs.

The salt springs are the property of the State. By the treaties of 1788 and 1795 the State acquired the title to the lands containing these salines, of the Indians, including a territory of more than one mile in width around the Onondaga lake. Previous to this time, small quantities of salt, of an inferior quality, had been made from brine obtained from shallow excavations in the earth, near the margin of the lake.

The first act concerning the salt springs was passed in 1797. It was therein provided that the reservation should be laid out into suitable and convenient lots containing some ten or fifteen acres each, and that leases should be given for the occupancy of these lots for the term of three years, to such persons as had or would erect salt works thereon, of a certain specified capacity, and pay the State a rent or duty of four cents for every bushel of salt made from the brine thus obtained. This act also defined the rights and privileges of manufacturers, and provided for the appointment of a State superintendent to collect the duties and enforce the regulations therein specified.

The quantity of salt manufactured that year was only 25,474 bushels.

The demand for salt continued to increase until

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it became necessary to sink deeper wells and raise the brine by machinery.

In 1812 the Legislature reduced the duty to three cents per bushel, and appropriated two acres of land for the purpose of making salt by solar evaporation. The total production of that year was 221,011 bushels.

By the act of 1817 the duty on salt was increased to twelve and a half cents per bushel, and the superintendent was required to report and pay quarterly to the commissioners of the canal fund.

The Constitution of 1821 provided that the duty on salt should not be reduced below twelve and a half cents per bushel until after the full and complete payment of principal and interest on the money borrowed or to be borrowed for the construction of the Erie and Champlain canals. This rate of duty continued to be collected and paid over as directed by the act of 1817, and required by the Constitution, until, by an amendment of that instrument in this respect in 1833, the Legislature was authorized to reduce the duty on salt to six cents per bushel, and pay the same to the Treasurer of the State to the credit of the general fund.

The increased demand for salt consequent upon opening up the country by the construction of the Erie canal, in conjunction with the annoying difficulties which had long existed among the salt manufacturers in regard to their respective rights to the use of the brine, and the necessity of furnishing a more adequate supply influenced the Legislature, by act of 1825, to direct the superintendent to take possession of all the wells, pumps and other machinery then on the reservation for supplying brine, and provide that thereafter the brine should be furnished at the expense of the State. Previous to the last above mentioned date, the wells were sunk by the manufacturers, who were also required to furnish the machinery necessary for raising and distributing the brine, at their own expense. No private wells were permitted on the reservation from that time. The duties of the State superintendent, which heretofore had been confined mainly to the inspection of salt and the collection of the revenues, were by this act greatly enlarged. Additional officers were appointed to assist him, in sinking wells and providing and superintending the machinery necessary to raise and furnish to the manufacturers a full supply of brine, in accordance with the priority of the leases for the lots which they respectively occupied. Under this arrangement, the product of salt, was materially increased, as will appear from the superintendent's report. In 1828, 1,160,888 bushels were manufactured.

A commendable zeal has ever been manifested on the part of the State to improve the *quality* as well as to increase the *quantity* of salt made from these springs. As early as 1822, the State offered and paid a bounty of *three* cents per bushel for all coarse or solar salt that should be sent to the Hudson river or to Lake Erie, or that should be sent from Oswego to Canada, and that manufacturers of coarse salt should be allowed a preference in the distribution of the brine. Repeated and expensive chemical experiments for improving the quality and lessening the cost of its production, have been made at the expense of the State.

On the assumption that a sufficient sum of money had been received from the duties on the manufacture of salt, as established by the act of 1817, and incorporated into the Constitution of 1821, to discharge the canal debt of the State, together with the fact that a large reduction in the tariff had been made on foreign salt by the general government, the Legislature was allowed, by an amendment of that instrument in 1833, to reduce the duty on salt; but such reduction should not be below *six cents* per bushel, which reduction was perfected at the next session of the Legislature.

By a subsequent amendment of the Constitution, in 1835, the duties on salt were restored to the general fund.

By the terms of the amendment of 1835, the Legislature was re-invested with the power to regulate the amount of duty that should be imposed on salt "whenever a sufficient sum of money had been *received* and *invested* to discharge the canal debt." That amendment also provided that the canal tolls on salt should not be reduced until such debt had been fully *paid* and *discharged*. To evade these embarrassing requirements, in 1841 an act was passed authorizing a "*drawback*" on the salt duties, which was denominated a bounty. In 1843, by an amendment, the provisions of the above mentiond act were extended to lead, coal and gypsum, which paid no duties to the treasury. Under this bounty law there has been paid from the treasury of the State the sum of $417,101. A bounty was also paid by the State upon the transportation of salt barrels carried upon the canals. In 1846, the Finance Committee of the Senate, in their report recommending a repeal of the act of 1841, giving a bounty on salt, say "The principle upon which the law in question is founded, is believed to be wholly indefensible. The price of salt to the consumer should be the cost of its manufacture, the duty paid to the State, and the expense of its transportation. Those residing nearest the works have a natural advantage over those who reside more remote. The price of salt should be enhanced in proportion to the distance at which the consumer resides from the place of its manufacture;" and conclude their report by recommending the repeal of the bounty law, and in favor of a duty of two cents a bushel on salt. By the subsequent action of the Legislature on the above mentioned report, the bounty law was repealed, and the duty on salt reduced to *one cent* per bushel; the immediate effect of which was to reduce the revenue which the State obtained from the manufacture of salt from $230,014.86 in 1846, to $39,513.51 in 1847.

The law "concerning the salt springs and the manufacture of salt" in force at the present time was passed in 1859. It sets out with a recital of the provisions of the present Constitution on that subject, and declares that "there shall be collected and paid upon all salt manufactured in this State a duty of one cent per bushel of fifty-six pounds, which duty shall be paid into the general fund." By this act the possession of all the real

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estate and personal property belonging to the people of the State, connected with the salt works and salt springs, together with the "care and superintendence of the salt springs and the manufacture and inspection of salt upon the reservation," are vested in a superintendent to be appointed by the Governor and Senate, and hold his office for three years. He is authorized to appoint deputies and assistants and establish such rules and regulations as he may deem expedient from time to time. He is also required "to provide such additional wells, pumps, reservoirs, aqueducts and machinery as shall be needful for supplying the manufacturers of salt with brine in the largest quantity and of the best quality," and report to the Comptroller at the end of each fiscal year. The forty-fourth section of this act makes it the duty of the superintendent to lease for a term of thirty years from June 20th, 1859, the several salt lots on the reservation, the fee of which is in the State, for the purpose of manufacturing salt, subject only to the regulations prescribed by law, reserving to the State the power of vacating such lease at any time by paying a reasonable value for such manufactories and their necessary appendages.

By this act the vexed question in regard to the priority of right to the use of the brine was also settled, by declaring that "no distinction shall be made in the distribution of brine, but all the erections which were in existence on the 15th day of April, 1858, shall be considered equally entitled to a supply of water from the springs, but in case there should be an insufficiency of brine to supply all such erections, then the superintendent shall classify the same in such a manner as to furnish a supply of water to each of such erections an equal portion of the time. And the superintendent shall, during the months of July and August, classify favorably to the erections for the manufacture of solar salt; but such classification shall not give said erections a supply for more than an equal portion of the time as above mentioned."

The act from which the above extracts are made, is the law now in force on this subject, and is a codification of former statutes, with numerous amendments and additions.

The present constitutional provision in regard to the salt springs and the lands connected therewith, may be found in section 7 of article 7 of the Constitution of 1846, as follows:

"The Legislature shall never sell or dispose of the salt springs belonging to this State. The land contiguous thereto, and which may be necessary and convenient for the use of the salt springs, may be sold by authority of the law and under the direction of the commissioners of the land-office, for the purpose of investing the moneys arising therefrom in other lands alike convenient, but, by such sale and purchase, the aggregate quantity of these lands shall not be diminished."

By reference to a report of the commissioners of the land-office, Convention Document No. 27, it will be seen that the lands reserved for salt purposes had, at the adoption of the present Constitution, been reduced to..... 550 acres.

Since which, and by the authority contained in the second clause of the section given above, the State has purchased,.....	542.12	
And reclaimed by lowering the Onondaga lake,.....	900	
		1,302.12
Under the same provision the State has sold or exchanged,.....		127.25
Salt lands now owned by the State,...		1,174.87

In reply to an interrogatory of this Convention, in relation to the value of these lands and the salines connected therewith, the commissioners of the land-office say:

"1. We do not know the present value of the salt lands belonging to the State, and have no means of making an estimate of the approximate value thereof.

"2. We know of no way of determining the value of the salines. The State owns the water and delivers it to various individuals and companies to be made into salt, receiving from these parties such sums as has been determined by law. This sum, since 1846, has been one cent a bushel of 56 pounds.

"The value of the salines must then be considered as that sum that the State may justly demand of the manufacturers for the salt water delivered to them."

In addition to the above mentioned real estate and the salines therein contained, the State owns over three hundred thousand dollars' worth of other property which is employed, as indicated in the following schedule, in the supplying of brine to the manufacturers of salt:

Fifteen salt wells now in use, cost and present value, as near as can be ascertained, $3,000 each,.....	$45,000
Six rotary pumps, $250 each,.....	1,500
One pump house and machinery at Geddes,...	15,000
One pump house and machinery, Third Ward, Syracuse,.....	30,000
One pump house and machinery, First Ward, Syracuse,.....	35 000
(Old pump house at Syracuse, worn out, probably cost $15,000.)	
Three high reservoirs, one in Third Ward, one in First Ward, Syracuse, and one at Geddes, $5,000 each,.....	15,000
Eight reservoirs at Geddes, First Ward, Syracuse, and at Liverpool, $2,500 each.....	20,000
One earth reservoir at Syracuse, Third Ward,.	20,000
Forty miles, as estimated, of log conduits, now worth about 55 cents per lineal foot,.....	116,160
One dressed stone office, in Third Ward, Syracuse,.....	7,500
One brick office in First Ward, Syracuse,.....	4,000
(One-half of it used as canal collector's office.)	
One brick office at Liverpool,.....	800
One brick office at Geddes,.....	800
One barrel stand at First Ward, $350, one at Liverpool, $250,.....	600
One barrel stand at Geddes,.....	350
	$311,710

During the last twenty-one years the State has received a revenue from the salt manufactured at these springs, in the way of duty, of,.....	$1,264,123 91
And expended in ordinary expenses, damages and improvements,.....	948,922 31
Leaving a net balance to the State of,.....	$315,211 60

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As will appear in detail from the annexed statement:

YEARS.	EXPENDITURES. Ordinary expenses and improvements.	EXPENDITURES. North side cut canal Onondaga lake improvement.	TOTAL.	RECEIPTS. Current revenue.
1846	$18,917 78	.....	$18,917 78	$75,507 34
1847	20,547 95	.....	20,547 95	92,396 64
1848	25,520 21	.....	25,520 21	43,847 67
1849	29,754 05	.....	29,754 05	51,598 98
1850	29,027 00	.....	29,027 00	44,864 03
1851	30,000 00	.....	30,000 00	44,456 58
1852	33,911 53	$1,000 00	34,911 53	47,928 17
1853	24,829 70	.....	24,829 70	52,156 85
1854	25,250 00	.....	25,250 00	54,987 88
1855	51,000 00	.....	51,000 00	57,777 90
1856	43,000 00	.....	43,000 00	60,975 89
1857	52,000 00	14,000 00	66,000 00	58,476 91
1858	58,000 00	2,300 00	61,300 00	58,138 18
1859	44,000 00	12,000 00	56,000 00	69,026 51
1860	43,916 00	7,500 00	51,416 00	65,875 51
1861	48,500 00	15,000 00	63,500 00	60,249 57
1862	38,000 00	4,074 44	42,074 44	87,418 98
1863	32,000 00	.....	32,000 00	70,040 75
1864	50,000 00	.....	50,000 00	88,125 31
1865	48,000 00	.....	48,000 00	62,765 64
1866	49,184 00	.....	49,184 00	70,411 68
	$807,355 22	$58,874 44	$866,229 66	$1,264,133 91
Amount of moneys paid for damages and removing salt structures from lands sold,			85,693 65	
			$948,923 31	

The salt company of Onondaga was organized early in the year 1860, under the general manufacturing laws of this State, for the manufacture and sale of salt, with a capital of $160,000, which was subsequently increased by a stock dividend of an equal amount. Arrangements were entered into with the owners of blocks, by which all the fine salt blocks, 316 in number, were leased to this company for the term of ten years, at a yearly rent or interest of twelve and a half per cent upon an estimated average valuation of over $5,500 each. A similar arrangement was affected with the manufacturers of solar salt, by which 38,517 vats or covers were leased to the company at twelve and a half per cent on an average valuation of $40 each.

The absolute control thus secured over the manufacturers enables the company to determine the quantity of salt that shall be manufactured: the number of works that shall be employed in such manufacture; the price that shall be paid to the manufacturers, and the price at which it shall be sold.

An ordinary fine salt block is capable of making from 250 to 280 bushels of salt per day. Of the 316 fine salt blocks on the reservation, not more than one-half or two-thirds of them are kept in repair, and only a small portion of this latter class is kept in continuous operation during the whole salt manufacturing season.

The introduction of coal in the manufacture of fine salt has been attended with highly beneficial results. Its superiority over wood is evidenced in the improved quality of the salt, which can be produced at a largely reduced cost. Former apprehensions in regard to the scarcity and probable price of wood have been dissipated. The future production will only be limited for the want of adequate facilities to raise and distribute the brine, which nature has deposited in this exhaustless reservoir which underlies these works, and for the want of a remunerative market. The price of coal at the works has varied for several years past from three dollars to seven dollars per ton; it is now selling freely at five dollars. By an advantageous contract, the salt company are enabled to furnish the manufacturers with coal for the next seventeen years, at an advance of fifty cents over prime cost.

The production of salt by solar evaporation is steadily increasing, as will be seen from the tables which accompany this report. A solar cover (as the vat is called into which the brine is placed for evaporation) costs from forty to fifty dollars, and will produce about fifty bushels of salt in a season. The quality of the salt produced by this process is, for many purposes, superior to that produced by artificial heat. The following table exhibits the production of the works, and the price at which the same has been sold at Syracuse for the last twenty years:

DATE.	No. of bushels.	Solar.	Maximum price.	Minimum price.	Average price.
1847	3,951,355	202,972	$1 56	$0 87½	$1 17
1848	4,737,126	342,497	1 08	75	93
1849	5,083,569	357,735	. 80	70	77
1850	4,295,919	374,782	1 50	1 25	1 19
1851	4,614,117	378,497	1 25	1 25	1 25
1852	4,922,583	433,595	1 00	1 00	1 00
1853	5,404,524	577,447	1 50	1 12½	1 18
1854	5,803,347	734,474	1 40	1 30	1 34
1855	6,062,883	498,124	1 50	1 30	1 30
1856	5,966,810	709,391	1 60	1 25	1 41
1857	4,312,126	481,280	1 25	1 25	1 25
1858	7,033,219	1,514,954	1 33	1 25	1 27
1859	6,894,272	1,345,022	1 00	83	90
1860	5,563,247	1,462,565	1 25	1 25	1 25
1861	7,200,391	1,884,697	1 25	1 25	1 25
1862	9,053,974	1,963,052	1 50	1 25	1 40
1863	7,342,863	1,437,656	2 45	1 70	1 99
1864	7,378,834	1,971,122	3 25	2 00	2 70
1865	6,385,930	1,886,760	2 50	2 10	2 36
1866	7,159,503	1,978,188	2 35	2 35	2 35
Total,	175,857,072	22,534,153			

The cost of producing a bushel of fine salt has varied materially during the last six or eight years. In 1861 the salt company of Onondaga paid the manufacturers of fine salt 11¼ cents per bushel, which included fuel, boiling and repairs; manufacturers of solar salt received during the same year 5½ cents per bushel. In the fall of 1862 the price paid for manufacturing fine salt was advanced to 16 cents per bushel.

By a reference to the testimony of John W. Barker, Esq., who is the secretary of the company and also a manufacturer of salt, it will be seen that the price which the company pays during the present year is as follows, namely: for boiled salt nineteen cents per bushel, and for solar salt eight cents per bushel; that the cost to the company for a barrel containing five bushels of salt is as follows:

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FOR FINE SALT.

Fuel, boiling and repairs, 19 cents per bushel,	.95
State duty, 1 cent per bushel,	.05
Taxes and office expenses,	.10
Rent of block at 12½ per cent,	.25
Packing,	.05
For the barrel,	.45
Total cost per barrel,	$1 85

FOR SOLAR SALT.

For manufacturing at 8 cents,	.40
For State duty,	.05
For taxes and office expenses,	.10
For rent of vats, etc., at 12½ per cent,	.55
For barrel,	.45
	$1 55

The present price of salt, and the price at which it has been steadily maintained for the last three years, is two dollars and thirty-five cents per barrel; but on account of competition with foreign and other domestic salt, the company have not been able to realize that price on salt sent to New York city, or out of this State. The production of 1866 was 7,158,503 bushels, not more than one-sixth of which was sold in the State at the home or Syracuse price. The whole quantity sold that year in the State, including the northern counties of Pennsylvania and that portion of Canada supplied through the Champlain canal, was 2,071,789 bushels, at an average price of from $2.20 to $2.25 per barrel. The balance of that year's production was sold as follows: 748,314 bushels in New York city at $1.60 to $1.75 per barrel, net; 510,330 bushels in Canada, via Oswego, at $2.03 per barrel, net; 1,916,900 to lower lake ports, at $1.99 per barrel, net; 1,911,170 bushels to upper lake ports, at $2.03, net. The average net price which the company realized, for the production of 1866, is $2.03 per barrel, according to the testimony of the secretary.

If the actual business of 1866, which falls considerably below the average of the last seven years, and largely below that of 1862, be subjected to the following analyses, the net profits derived from the salines for that year will be obtained thus:

The Salt Comp'y of Onondaga in account with Salt, Cr.

By 1,431,700 3-5 barrels salt, sold at an average price of $2.03,		$2,906,352 22
Dr.		
To 1,066,064 barrels fine salt, at $1.85 per barrel,	$1,916,718 40	
To 395,536 3-5 barrels solar salt, at $1.55 per barrel,	613,236 75	
		2,529,955 15
Profits received by the company in 1866,		$376,397 07
From which deduct interest at 7 per cent on capital stock, surplus and borrowed, $1,488,000,		104,160 00
Net profits of the company in 1866,		$272,237 07
To which add net revenue which the State received for duty over expenses in 1866 (see Constitutional Manual, vol. 2, page 185),		24,557 48
Which gives a net profit derived from the springs in 1866 of,		$296,794 55

This sum will represent the interest, at 6 per cent, on $4,946,575.83, which may be considered the approximate value of the property owned by the State on the reservation. Included in the above valuation are the wells, pumps, offices, reservoirs, aqueducts, machinery, etc., which are estimated at $311,710.

From an examination of this subject it is apparent that no uniform policy has prevailed in regard to these springs. The numerous petitions, reports and legislative acts abundantly prove that conflicting views have long existed between the people and the manufacturers. The liberality with which the State has raised the brine and poured it into the vats and cisterns of the manufacturers, almost free of cost, the ease with which they convert it into salt, and the protection afforded them by nearly prohibitory rates of duty and canal tolls on foreign salt, have ever presented strong inducements to them to enter into combinations which no statute laws can effectually prevent. From the character of the business, there is probably no necessary article of consumption produced in the State so readily monopolized as Onondaga salt. Under the plea of furnishing cheap salt to the people, the manufacturers have generally opposed all restrictions and duties beyond a sum sufficient to furnish a full supply of brine. While on the other hand, the State has repeatedly interfered to regulate the business and adjust the duties so as to correspond with the conditions of the country and the demands of the treasury, relying upon individual competition to give the people salt at the lowest price for which it can be afforded.

Your committee are unable to reconcile the practice which prevails in regard to the sale of salt with the principles of justice or with a sound commercial policy.

From the testimony which accompanies this report, it appears that over one million of bushels were sold to the people of this State at from twenty to twenty-five per cent more than was received from sales of their salt in other States. The rules of legitimate trade are reversed in regard to the sale of salt. The greater distance the consumer resides from the place where the article is manufactured, the less price he is required to pay. Citizens residing in the northern, western, and central counties of our State have abundant reason to complain of the unjust discrimination against them; nor can such discrimination be justified upon the plea of unprofitable sales in distant and competing markets. Should our citizens, who consume but a small portion of the production of these springs, be compelled to make up these deficiencies? The efforts of the State to restrict combinations and encourage competition, have been exceeded by the ingenuity of the manufacturers in the opposite direction.

The propriety of longer continuing the anomalous relations which have hitherto existed between the State and the manufacturers of salt, is a question which demands the serious consideration of this Convention. The reasons which originally controlled the action of the State on this subject no longer exist. Experiments which the State has caused to be made during the last

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century, and the steadily increasing annual production of salt, conclusively prove the capacity of these saline deposits sufficient to supply the whole State with salt.

Therefore, the question which now presents itself is not one in regard to the capacity of these springs, nor the best method of manufacturing the salt (these important matters have been fully settled), but it is, what shall be the future policy of the State in regard to them?

In the further examination of this subject, your Committee would briefly consider the following propositions:

1st. Shall the present policy in regard to these springs be continued?

2d. Shall the State become the sole manufacturer of salt?

3d. Should the salt springs be sold or otherwise disposed of under certain restrictions?

4th. Shall the duty on salt be increased?

1. Shall the present policy in regard to these springs be continued?

The Constitution of 1821 declared that "the Legislature shall never sell or dispose of the salt springs belonging to this State, nor the lands contiguous thereto, which may be necessary or convenient for their use." The only change worthy of note is that the present Constitution permits the Legislature, under the direction of the commissioners of the land-office, to sell the lands contiguous thereto, and which may be necessary and convenient for the use of the salt springs, for the purpose of investing the moneys arising therefrom in other lands alike convenient.

The present act, chapter 346, Laws of 1859, requires the State superintendent to take the care and superintendence of the springs and the manufacture and inspection of salt, to apportion the salt lands among the manufacturers, and to supply them with brine. For the expenses incurred and the services rendered, under the provisions of said act, the manufacturers are required to pay the State one cent per bushel, which is placed to the credit of the general fund. The amount of duty thus collected for the last twenty-one years, over expenses paid by the State, gives an annual average of $15,010. The net revenue for the last seven years gives an average of $52,687.57, exclusive of damages and paid for removing structures from lands sold. As has been shown, the net revenue which the State received for 1866 was $24,557.48; and the net profits of the manufactures during that year were $272,231.07. It will be observed that these calculations are most favorable to the manufacturers. In making up the account, interest at 12½ per cent is allowed them on over three and one-half millions of salt structures, and seven per cent on their active capital; while no allowance of interest whatever has been made to the State for the use and depreciation of its valuable real and personal property employed in the business. From a careful examination of this branch of the subject, your committee conclude that the present quasi-copartnership which in fact exists between the State and the manufacturers of salt, should be dissolved as soon as it can be effected with due regard to the rights of all the parties concerned.

2. Shall the State take possession of the manufactories on the reservation, as it took control of the wells and distributing machinery in 1825, and become the exclusive manufacturer of salt?

It will be seen, by a reference to section 44 of chapter 346 of the Laws of 1859, that the superintendent is authorized to lease the several salt lots on the reservation, the fee of which is owned by the State, for the purpose of manufacturing salt, subject to the same regulations and restrictions as now are or may be hereafter imposed by law; and provides that "no improvements on said lots, except the salt manufactories and their necessary appendages, shall be paid for by the State if any lease hereby authorized shall not be renewed at the expiration of thirty years, or if, before the expiration of said term, the State shall provide by law for vacating such lease." It will also be seen that, by the express conditions contained in the leases by which these lots are held by the manufacturers, the State reserves the right to vacate them at pleasure and pay a reasonable value for the individual salt manufactories and the necessary appendages erected thereon.

There is a seeming plausibility in the proposition that the State should become the exclusive manufacturer of salt in order to supply the people with so indispensable an article at prime cost. It is argued, that as the people are the owners of these salines, and as the State delivers the brine to the several blocks and vats, it will require but one step more—that of boiling and gathering the salt—to complete the whole business. As the State now performs a large and expensive part of the work, it is urged that it might, with the utmost propriety, perform the remaining portion of the process; and that, in this way only, can the people expect to obtain cheap salt. While your committee are compelled to admit the force of these propositions, they are opposed to committing to the State the management of any commercial transaction that can be as well conducted by an individual. The State should only be required to do those things for the people which they cannot advantageously do for themselves.

3. Should the salt springs be sold or otherwise disposed of, under certain restrictions?

The necessity which originally required the State to aid the manufacturers in the production of salt no longer exists. In the incipient stages of the business private capital could not be obtained to furnish the citizens of the State with a full supply of salt from these salines. That section of the State was then new and sparsely settled; transportation slow and expensive. In addition to these disabilities, the business was to a great degree an experiment. But those years of doubt and discomfort have passed away. By the blessing of a kind providence, the forest has been turned into the fruitful field. Poverty has given way to plenty. The railroad car and canal-boat now take the place of the ox cart and flat boat. Private capital now supplies State and national necessities.

Again, instead of this State possessing a monopoly, it has been ascertained that salt is one of the most abundant substances on our globe.

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Nearly every State in the Union has a supply within its own borders. Reduce the customs and canal tolls on foreign salt to correspond with other articles of prime necessity, of equal value and the citizens of Syracuse will be able to purchase "Ashton's," "Turk's Island," and "St Ubes" salt at their own doors, cheaper than they now sell their own production.

The prohibition against disposing of the salt springs of the State was intended to preserve to the people the control over them, with power to regulate the manufacture and supply of salt, and to prescribe the rate of duty or rent that the State should receive for furnishing the brine. But by the operation of the act of 1859, and the practice under it, the Legislature has in effect "disposed" of these springs by disposing of the water thereof, and virtually placed the unrestricted control of the entire production in the hands of an incorporated company. Having thus practically obtained all the benefits that could be secured by a title deed together with the guaranty of the State for an abundant supply of salt water of the best quality, it is not difficult to account for their opposition to the sale of these springs and the lands and appurtenances belonging thereto.

A majority of your committee have come to the conclusion, in view of all the circumstances which surround this question, to recommend to this Convention a relaxation of the present constitutional provisions on this subject, and provide that, under certain certain circumstances, and in a definitely prescribed manner, the salt springs may be sold.

It will be observed by reference to the article herewith submitted, that such sale is not mandatory—only permissive; and that it cannot be effected surreptitiously. The care with which the subject is guarded, nearly amounts to a submission of the question to the people. It is referred to the joint judgment and action of the commissioners of the land-office and the Legislature; the former to entertain such proposals as they may deem advantageous to the State, and submit the same to the Legislature for approval or rejection.

The only question that now remains to be considered, is—

4. Shall the duty on salt be increased?

It has been shown that the net profits on the production of 1866 would pay an interest on a capital of nearly five million dollars, which represents the value of the State property on the reservation. The annual interest on this sum, at six per cent, is $296,794.55. At the present rate of duty, "after deducting salaries and expenses," the State received, in 1866, $24,557.48. Aside from this sum, your committee are not aware that the State or the people thereof, received any other valuable consideration. This, then, is the net revenue to the State from this property, which is an interest on the value thereof of less than one-half of one per cent. Should the duty be increased to three cents per bushel, as proposed by the provision herewith submitted, the net revenue to the State would, on the basis of the production and expenditure of last year, amount to $165,571.09, which gives an interest of a fraction less than three and one-third per cent on the foregoing valuation. From one-quarter to one-third of these revenues should, for a limited number of years, be devoted to the sinking of new wells and other improvements, that the manufacturers may be furnished with a full supply of brine during the best and most profitable season of the year for solar evaporation.

The State officers have frequently called the attention of the Legislature to this subject. Governor Morgan in his message to the Legislature in 1861, says: "The State now owns about one thousand acres of land, estimated, together with the appurtenances, to be worth at least two millions of dollars; and the salines themselves are of incalculable value. Yet, as will appear from the statements, they have for a number of years past averaged a net income of only about three-quarters of one per cent on their estimated value. Legislation has unwisely reduced the duties on this important staple. Were the consumption of salt confined exclusively to our own State it would be a matter of less importance whether the revenue from duty was larger or smaller; but when it passes our own borders, as five-sixths of it does, the unreasonably low tariff operates unjustly upon the people of this State. In view of which I recommend that the duty be increased to two cents per bushel."

The Comptroller, in his report to the Legislature in the same year, says: "The salt springs, lands and buildings connected therewith, are a vast estate, worth probably two or three millions of dollars. In a financial view more revenue might well be expected from them."

The committee on the manufacture of salt, of the Assembly of 1850, to which "was referred various petitions asking that the tolls on foreign salt passing on our canals may be reduced," say through their chairman, Hon. Elias W. Leavenworth, that "these springs are a source of revenue to a large amount, and have paid into the treasury of the State nearly four millions of dollars, most of which was applied to the Erie canal debt; the springs would now annually pay into the treasury more than six hundred thousand dollars a year, a sum equal to the interest on a capital of ten millions of dollars. Such is the present value of the salines of Onondaga; and, reasoning from the history of the past, not a single generation will have passed away before their power to produce revenue, and their consequent value will, with ordinary wisdom and prudence, at least be doubled. After the canals, what other property of a value approaching this does this or any other of the States possess? In case of any emergency in the future, from what other sources are such revenues to be derived? What other property can look forward to such a prospective increase in value?"

Here we have the deliberate judgment of the highest State officials as to the value of this property, and its availability as a source of revenue.

Governor Morgan, from a personal examination, estimates the land, together with the appurtenances owned by the State, to be worth at least two millions of dollars, and the salines themselves of incalculable value; that the policy

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which reduced the duties on this important staple was unwise, and that it operates unjustly upon the people of this State.

General Leavenworth, of Syracuse, than whom no man in the State is better qualified to judge, in 1850 estimated the value of these salines at ten millions of dollars, which, with ordinary wisdom and prudence on the part of the State, could be doubled in a single generation. With the single exception of the canals, the State possesses no property of such immense value. These springs are capable of yielding revenue to supply any emergency. To which your committee beg leave to suggest that such emergency is now upon us. At no former period in its history has the State been more imperatively called upon to avail itself of every legitimate source of revenue than at the present time. The report of the Committee on the Finances of the State augments our present State indebtedness to an amount beyond any former precedent.

The revenues from our canals are appropriated to pay the cost of their construction and enlargement. The salt springs should be made to contribute a reasonable sum toward the payment of the debt incurred by the State in the preservation of the life of the nation, and to that extent relieve the people of the heavy burden of taxation.

Your committee having given that attention to the investigation of this subject which their other duties would permit, ask leave to submit the following provision in regard to these springs, and be discharged from the further consideration of this subject:

"SEC. —. The salt springs and property appurtenant and contiguous thereto, belonging to this State, shall never be sold, leased nor otherwise disposed of, except as hereinafter provided; and so long as they remain the property of the State, the Legislature shall by law impose upon all salt manufactured therefrom a rent or duty of not less than three cents per bushel. Provided, however, that such springs and property may be sold by and under the direction of the commissioners of the land-office, and in pursuance of a special act of the Legislature approving and allowing such sale.

JAMES A. BELL,
CHARLES E. PARKER.

I concur and recommend a removal of the present constitutional restriction and the sale of the springs and property connected therewith, as provided in this report.

WM. H. HOUSTON.

The evidence before the committee, and my own reflections upon the subject, has led me to the conclusion that the best thing the committee can do is to recommend to the Convention to remove the constitutional restraint against the sale or other disposition of the springs by the Legislature.

JOHN P. ROLFE.

Mr. BELL—I am informed that two minority reports are to be made, one from the gentleman from Onondaga [Mr. Comstock], and the other from Mr. McDonald. Mr. Comstock is here and will himself state whether he is prepared to make his this evening or not. Mr. McDonald, I understand, asks a few days in which to prepare his report.

Mr. COMSTOCK—I desire to submit a report embracing the views of the majority of the Committee on the Salt Springs, upon the principal questions discussed in the report of the chairman. I am not able to submit it to-night in consequence of the absence of several members of the committee; and therefore I ask leave to submit it to-morrow or next day.

There being no objection, leave was granted.

Mr. ALVORD—I would like to ask the Chairman of the Salt Committee, who has made this minority report, whether he has included in it the printed testimony taken?

Mr. BELL—That was not the understanding, as I understood the announcement of the President.

The PRESIDENT—It will be ordered printed under the rule.

Mr. McDONALD—I have the misfortune to disagree in both the reports in some particulars, and therefore I ask leave to present a minority report, which I will have prepared, and will present by Wednesday morning. I had supposed that I would be able to sign one or the other of these reports until I heard them read.

The PRESIDENT—No objection being made the gentleman's report will be received under the proper head when he is prepared to submit it.

The Convention again resolved itself into Committee of the Whole upon the report of the Standing Committee on the Judiciary, Mr. C. C. DWIGHT, of Cayuga, in the chair.

The CHAIRMAN announced the pending question to be on the motion of Mr. Hale to postpone the consideration of the amendment offered by Mr. Spencer.

The question was put on the motion of Mr. Hale to postpone, and it was declared carried.

Mr. SMITH—What is the amendment now pending?

The CHAIRMAN—There is no amendment now pending. Section 6 is now under consideration, and the question is, are there any, other amendments to be proposed to it?

Mr. SPENCER—I move that the consideration of the entire section be postponed for the present.

The CHAIRMAN—The only postponement which can be made in Committee of the Whole is to exchange the consideration of one section for the consideration of another.

Mr. SPENCER—Then I move that the committee pass by the further consideration of section 6 for the present.

The question was put on the motion of Mr. SPENCER, and it was declared carried.

The SECRETARY read the seventh section as follows:

SEC. 7. The Legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and equity as they have heretofore possessed.

No objection being offered to the section, the SECRETARY announced the eighth section.

Mr. HALE—I move that the eighth section be passed over and that we consider the ninth section.

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The question was put on the motion of Mr. Hale, and it was declared carried.

The SECRETARY then read the ninth section as follows:

SEC. 9. No judge, either of the court of appeals or of the supreme court, shall sit in review of his own decision.

Mr. RUMSEY—I move to strike out of the section the words "or of the supreme court." It seems to me that it is eminently proper that the judge of the court of appeals should not be permitted to review his own decision. But it has always been the practice in this State, and it is right, in my judgment, that a judge who at *nisi prius* makes a decision without due consideration, and who does not by doing so necessarily imbibe any prejudice for or against the opinion he may pronounce, should have the privilege of reviewing that decision in general term. It has always been so, and in my judgment it should continue to be so.

Mr. A. J. PARKER—I trust no portion of that section will be stricken out. One of the very evils now to be cured is the sitting of a judge in the general term to review the decisions he has made at circuit or special term. The consequence is that, having already made up his mind, he adheres to his opinion, and there are in truth but two other judges sitting with them, and with two judges differing in opinion he controls the result. Under the system proposed there will be no necessity at all for the judge of the supreme court ever sitting in review of his own decision, for there will be in every district four judges all the time, none being required at any time to serve in the court of appeals. So they will always be able to constitute a general term of three judges without including in the number of those who sit, the judge who tried the case at circuit. I believe a very great good will be accomplished by enabling a suitor to review a decision made at the circuit before three other judges who are in no way committed in regard to the question.

Mr. RUMSEY—Will the gentleman from Albany [Mr. A. J. Parker] tell me how he proposes to pass upon a motion for a new trial upon the evidence; whether he would suffer it to be made before a judge before whom the case was tried?

Mr. A. J. PARKER—In the first instance, the proposed practice would be to make the motion before the same judge upon the minutes, and if the party desires it, then to appeal from his decision to the general term, where the judge who had already denied a new trial should not sit in review of his own decision.

Mr. BARKER—I move to add after the word "in," in the second line, the words "general term." There is some doubt as to what may be the meaning of sitting in review, and that will leave it so that sitting at general term, if an appeal is called for, he may sit in review of his own decision upon the minutes of his own court or in special term.

Mr. HALE—I would suggest to the gentleman from Chautauqua [Mr. Barker] whether his amendment should not apply after the words "supreme court."

Mr. BARKER—I will change it at the gentleman's suggestion.

Mr. A. J. PARKER—If this amendment is adopted it might happen that one of the judges who decided the case at the general term, and who might afterward be elected to the court of appeals, would be at liberty again to sit in review of his own decision. That is one of the evils, I think, we should guard against. I would not allow a judge in any court in the State to sit in review of his own decision.

The question was put on the amendment of Mr. Barker, and it was declared carried.

Mr. SMITH—I move a reconsideration of the last vote. I do not desire to discuss this subject to-night, not feeling able to do so. But it seems to me that the last vote has been passed rather hastily, and without consideration by the committee. If there is any one particular in which a change is demanded, it is, it seems to me, in prohibiting the judges from sitting in review of their own decisions. It has been conceded by all, so far as I understand the matter, in the discussion hitherto, that one of the existing evils to be remedied, is the permitting of judges to sit in review of their own decisions. For, however honest men may be, they will be influenced more or less by pride of opinion; they will incline to adhere to their first positions. If we do not remedy this evil, we shall make but very little progress toward the reform that has been called for, and which is absolutely needed. I hope gentlemen will consider carefully before they reject this proposition which has been presented by the committee.

The CHAIRMAN—The Chair would suggest that the vote which the gentleman from Fulton [Mr. Smith] moved to reconsider, was the vote on the amendment of the gentleman from Chautauqua [Mr. Barker].

Mr. SMITH—It appears that I was mistaken in the amendment which was adopted, my attention having been diverted, but I will suggest to the gentleman from Chautauqua [Mr. Barker] that I think he might accomplish his object by saying that the judge should not sit on appeal in review of his own decision. We do not know that there will be any general term. We have not adopted any thing of that kind. I suppose the idea is that the judge shall not sit in review of his own decision on appeal. A motion for a new trial is a motion; it is not properly an appeal.

Mr. A. J. PARKER—I hope that this matter may be considered and carefully examined before a vote shall be taken upon it. It seems to me the object of the amendment is that no judge shall sit in any court in review of any decision that he has previously made. The object the committee had in view was to secure judges who are entirely uncommitted upon the legal question before them. We should exclude a judge of the court of appeals from sitting upon a case he has once decided as judge of the supreme court. The principle is and should be that the party appealing or moving for a new trial should be entitled to a hearing before a new court, new men, judges entirely uncommitted upon the question. If it happens, as it very often will happen, that a judge has decided a case as referee, and is afterward elevated to the supreme

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court, he should not be permitted to be one of the three judges to sit on a review of that case. It is not fair to the party; it is not a new hearing. And the same principle should apply in the court of appeals. The amendment proposed by my friend from Chautauqua [Mr. Barker] would allow judges to sit in both the cases I have supposed.

Mr. BARKER—Not at all.

Mr. A. J. PARKER—If it does not I am satisfied with the amendment. If the gentleman will express his amendment in such a way that a judge at special term may review his own decision I will be satisfied.

Mr. C. L. ALLEN—Does the gentleman mean to include that class of cases where judges can grant new trials upon their own minutes immediately after the trial of cases before them?

Mr. A. J. PARKER—No, I do not.

Mr. BARKER—The prohibition in my amendment is limited; no judge either of the court of appeals or of the supreme court in general term, shall sit in review of his own decision.

Mr. WAKEMAN—I submit the amendment does not go quite far enough. Let us see what a judge may do. A case or bill of exceptions is made, upon which a motion for a new trial may be noticed before a special term. The judge who tried the case may be the judge who held the circuit. There is no appeal, but he is sitting in direct review of the bill of exceptions that has been settled by him. Now, it is said that a party may not move before him. But the other party may, if he is disposed to, and in that case the judge will be bound to review his own decision. I would allow the circuit judge to review any decision he made on a trial where a motion is made for a new trial on his minutes. Sometimes, when such a motion is made, it is based upon the decision or ruling of the judge; and when the judge comes to review the authorities he may be disposed to think he has made a mistake; and if the party who desires a new trial sees fit to move before the judge who tried the cause, he should have that privilege, and the judge should have the privilege of reviewing any ruling he has made during the trial, when a motion is made for a new trial on his minutes. But where a case or bill of exceptions is made up deliberately, and gets to special term, I think the principle should be adopted that the judge should not be permitted to review his decision on a bill of exceptions. I think we should allow him to review his decision and ruling on the trial; that is fair enough. In that case there is no advantage taken, because the party can move or not, as he chooses.

Mr. RUMSEY—What would the gentleman do in a case where the judge, doubting the correct rule of law in the matter, orders a judgment for one or the other of the parties, and sends it to the general term? Is there any reason why that judge should not review that decision? Is a judge unsafe to be trusted to review the decisions he has made at *nisi prius*? I have never heard of one in my life, whom I was not willing to trust with the same case afterward. The evil to be guarded against is that of sending justices to the supreme court or court of appeals after they have sat at general term, and coolly and deliberately examined a case and written an opinion upon it. I really can see no reason why we should overturn a rule that has existed as long as the common law has existed of allowing judges to review their decisions at *nisi prius*.

Mr. WAKEMAN—I can see no reason why a judge under such circumstances might not review his own decision, because he has made no decision in point of fact, except a mere ruling for the purposes of the case. Of course no wrong would grow out of that.

Mr. A. J. PARKER—That is no decision at all.

Mr. WAKEMAN—We have to fix some rule in the Constitution, and say how far it applies. Otherwise we had better leave it to the Legislature to fix it in particular cases.

Mr. HALE—I hope the amendment offered by the gentleman from Chautauqua [Mr. Barker] will not be reconsidered, and that the amendment offered by the gentleman from Steuben [Mr. Rumsey] will not prevail. The amendment of the gentleman from Chautauqua [Mr. Barker] carries out the idea which I think the committee held, that at general term judges should not be allowed to sit in review of their own decisions. It will be seen that there is no qualification as to what decisions they are prohibited from reviewing. The prohibition includes decisions made as referee as well as a court. The suggestions made by the gentleman from Genesee [Mr. Wakeman], that the judge should not be allowed to review his own decision at special term, it seems to me, has no force in it. An application for a new trial, if made to a single judge, should often be made to the judge who tried the cause, particularly in such cases as the gentleman from Steuben [Mr. Rumsey] mentions, where the judge himself is in doubt as to the propriety of his ruling. Whatever may be his decision upon the application, an appeal will lie to the general term, and then he will be prohibited from taking part in the review of his decision upon the original application.

Mr. MORRIS—This section, as it now stands, meets most cordially with my approval. I think it will meet with the approval of others besides those who are members of the bar. For one, I speak feelingly on the subject; for a case in which I was deeply interested once was decided absurdly by the referee, and that decision was confirmed by the same individual when he was elevated to a seat upon the bench. Having the same case before the same individual is, in fact, no new trial. The opinion is known before the case is heard the second time. I think the wishes of the community generally would be carried out by leaving the section as it now stands.

Mr. COMSTOCK—I hope that the motion to reconsider will not prevail, because I think the section as amended by the gentleman from Chautauqua [Mr. Barker] places exactly a proper restriction upon the right of the judge to review his own decision. It is very well known to all lawyers that the decision of a referee can only be reviewed, and is only reviewed at general term. It therefore will reach that class of cases. So the decision of a judge at the trial on special term

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without a jury is only reviewable at the general term. It will therefore reach that difficulty. But it is agreed that a judge ought to have the right and power to hear a motion for a new trial upon his own minutes and where the matter has not yet reached the general term. The gentleman from Steuben [Mr. Rumsey] supposes a case where a judge has merely made a *pro forma* decision without really having a mind upon it, and for the sake of allowing an appeal in the case. Now, I regard that as a decision to be reviewed, The record shows it to be a decision of the judge; and you cannot get behind the record. Nevertheless, I do not see any public evil whatever in requiring that the very case to which he refers shall be examined and decided by a class of judges to whom the case is unknown. I think the section will about reach the evil which has been so much complained of, if adopted as amended by the gentleman from Chautauqua [Mr. Barker].

The question was put on the motion to reconsider, and it was declared lost.

The question recurred on the amendment of Mr. Rumsey.

Mr. BARKER—I rise simply to make a suggestion to the committee; whether they have duly considered the practice that prevails in the court and which must necessarily prevail hereafter to a great extent in the consideration of a great many important cases? As it is, the judge at circuit has an important case on trial before him; important questions of law are raised; he makes a decision *pro forma* and goes on with the trial, and at the request of parties orders the case to be heard upon case or bill of exceptions at the general term in the first instance. Now, this constitutional prohibition prohibits the judge from giving the case a full, careful and satisfactory examination and the cause may pass into the court of appeals without an opportunity being afforded the judge who tried the cause to examine the same. I think that opportunity should be retained. As has been stated it is the rule that a judge is competent to set in review of his own decision in the common law court.

Mr. PRINDLE—Is it not to be presumed that the other judges are just as capable of giving that question a fair examination?

Mr. BARKER—Undoubtedly; but I cannot see how the judge who sits in circuit is disqualified.

The question was put on the amendment of Mr. Rumsey, and it was declared lost.

Mr. COMSTOCK — I move to strike out, at the close of the section, the words "of his own decision," and insert, in lieu thereof, the words "in which he formerly participated;" so that the section will read, "no judge, either of the court of appeals or of the supreme court, in general term, shall sit in review of the decision in which he formerly participated." It is to reach this point: the section as it is now framed would authorize a judge who had dissented in the supreme court, and who had given a minority opinion, afterward sitting in the court of appeals, to take part in the judgment of that tribunal, which he ought not to do. The object of this restriction is to have an impartial ruling of four judges who have not participated at all in the former decision.

The question was put on the amendment of Mr. Comstock, and it was declared carried.

Mr. KRUM—I move to strike out the word "either," in the first line. I think the amendment, "at general term," renders the striking out of the word "either" necessary.

The question was put on the amendment of Mr. Krum, and it was declared carried.

Mr. HALE—I move that the committee proceed to the consideration of section 12, omitting sections 8, 10 and 11. The provisions of sections 10 and 11 depend, in a great measure, upon what provisions shall be adopted in sections 6 and 8. Therefore, it is proper they should be postponed and considered afterward.

The question was put on the motion of Mr. Hale, and it was declared carried.

The SECRETARY read the twelfth section, as follows:

SEC. 12. The judges of the court of appeals, and the justices of the supreme court, shall not hold any other office or public trust. All votes for either of them for any elective office (except that of justice of the supreme court or judge of the court of appeals) given by the Legislature or the people, shall be void. They shall not exercise any power of appointment to public office, except as is herein specifically provided.

Mr. BICKFORD—I move to strike out in the second line the words, "or public trust." I don't know what may be meant by a public trust. It strikes me there may be some very important trusts which may be called public trusts. The question was raised as to whether the position of delegate to this Convention was an office, and secondly, if it was not an office, whether it was a public trust. And so there may be many other cases where there are public trusts which it may be perfectly proper for the judges to hold. For instance, the trustees of some institution or college, or an institution in which the State takes an interest, or which is supported by the State in whole or in part. It appears to me we had better strike out the words "or public trust."

Mr. MORRIS—I propose to insert the word "public" before the word "office," in the second line, provided the amendment offered shall prevail.

The question was put on the amendment offered by Mr. Morris, and it was declared lost.

The question recurred and was put on the amendment offered by Mr. Bickford, and it was declared lost.

Mr. KRUM—It seems to me that it is almost impossible to go on with the perfection of the report of this committee, after having passed the sections which we have passed; the report is so intimately blended with all its sections that it seems to be difficult to take—

The CHAIRMAN— The Chair will state to the gentleman from Schoharie [Mr. Krum], and to the committee, that the committee will return to the consideration of the eighth section, after having disposed of the twelfth section.

Mr. KRUM—I was intending to make a motion, in view of those facts, that the commit-

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the rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Krum, and it was declared lost.

Mr. SMITH—I move that we postpone this section and proceed to the consideration of section 14. This is a part of the scheme of the supreme court, and there are several plans before the committee. Before we can act intelligently upon them we ought to have time to consider them in connection. The fourteenth section is upon another matter which does not relate to the plan of the supreme court.

The question was put on the motion of Mr. Smith, and it was declared carried.

The SECRETARY proceeded to read section 14 as follows:

SEC. 14. Judges of the court of appeals and justices of the supreme court may be removed by concurrent resolution of both houses of the Legislature, if two-thirds of all the members elected to the Assembly and a majority of all the members elected to the Senate concur therein. All judicial officers, except those mentioned in this section, and except justices of the peace and judges and justices of inferior courts, not of record, may be removed by the Senate on the recommendation of the Governor. But no removal shall be made by virtue of this section unless the cause thereof be entered on the journals, nor unless the party complained of shall have been served with a copy of the complaint against him and shall have had an opportunity of being heard in his defense. On the question of removal, the ayes and noes shall be entered on the journal.

There being no amendment offered to the fourteenth section, the SECRETARY proceeded to read the fifteenth section as follows:

SEC. 15. There shall be in the city and county of New York the superior court of the city of New York and the court of common pleas of said city and county. And there shall be in the city of Buffalo the superior court of said city. The said courts shall severally have the jurisdiction they now severally possess, and such other original and appellate civil and criminal jurisdiction as may be conferred by law. There shall be five judges of the superior court of the city and county of New York; five judges of the court of common pleas of the said city and county of New York, and three judges of the superior court of the city of Buffalo. The judges of said courts, respectively, shall designate one of their number as chief justice, who shall act as such as long as he continues in office. Vacancies in said courts shall be filled by election by the electors of said cities, respectively, at the general election next after the vacancy shall occur. And until such general election in the same manner as vacancies in the office of justice of the supreme court as is hereinbefore provided.

Mr. S. TOWNSEND—I should like to hear some reason assigned by gentlemen who have this article in charge, why exception should be made in regard to the county of New York or the county of Erie. It seems to me that the full benefit of an uniform judiciary system might be extended to those counties as well as to other counties of the State. The plan of special courts, so far as New York is concerned, has been adopted since the Constitution of 1846. At that period, I know, in the minds of many who were called upon to pass upon the subject, the discrepancy was objectionable.

The CHAIRMAN—The Chair must remind the gentleman from Queens [Mr. S. Townsend] that there is no question before the committee.

Mr. S. TOWNSEND—Then to bring myself in order I move that the section be stricken out, although I shall not press the motion unless sustained by others. I think, sir, in the matter of judicial law and constitutional enactment uniformity should be sought after. There may be satisfactory reasons adduced why such exceptions should exist. I do not immediately represent either of these counties, although I confess to a considerable degree of familiarity with one of them, and were I a representative to-day from the city of New York I should feel that by sanctioning in this article, exceptions of this kind, I should give my consent to that system of class legislation which has been pursued toward that city, and of which they have so much complained. There is a similar rule adopted with regard to the formation of boards of supervisors. I think this body should make no exceptions of the kind. There may be a little more business—indeed there is a great deal more business concentrated in the city of New York. I was told the other day by a leading practitioner that they had almost the whole important business of the Union thrown incipiently upon them. But the principles of law must be general and uniform. Justice in New York should be justice in Onondaga. Justice in New York certainly should be justice in Kings on the other side of the East river, or in Westchester, which is reached by a bridge only a hundred feet long. If the gentlemen, as I said, who thoroughly understand this matter will show good cause why this anomaly should be continued I will accede of course. I wish to defer generally to those who are or should be best instructed on the subject, and I now withdraw my motion unless somebody else takes a similar view and desires to press the point I have raised.

Mr. ALVORD—It strikes me that it is rather novel to make these local courts constitutional courts. They have been created by statute. The time may come when it may be necessary to create local courts in other counties of this State; and the question is, if you make these constitutional courts, whether you do not by implication say to the Legislature that they cannot extend that kind of court to any other portion of the State except to Erie and New York. Under these circumstances I move to strike out the section.

Mr. COOKE—I move the following amendment to the section: to strike out all after the words, "There shall be," in the first line, and to insert, "such courts of limited jurisdiction in cities as the Legislature shall prescribe."

The CHAIRMAN—The motion to strike out will not be maintained if there be a motion to amend.

Mr. COMSTOCK—I should regret to have that question disposed of this evening, because I believe there are not upon the floor of the Convention at this time any of the delegates from New York city,

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with one or two exceptions at least. It is a very grave question whether these courts should or should not be fixed in the Constitution. They are courts of the very highest importance, scarcely second in importance to the supreme court, and it is a very serious question whether they should be subjected to the will of the Legislature; so that if the judges happen to be unpopular, or possibly obnoxious to the partisan prejudices of the hour, their offices may be abolished by the repeal of the laws constituting and organizing the courts, thus infusing uncertainty and change into the jurisprudence of that great city. The question is an exceedingly grave one in every aspect, and I should regret to see it disposed of without a fuller attendance of this Convention.

Mr. ALVORD—I think it is evident from the continued absence of seven gentlemen belonging to these courts that are now attempted to be constitutionalized, and particularly from their absence during the discussion on this question of the judiciary, that they have made up their minds that they care but little about it, and certainly, so far as we are concerned, we should not attempt to constitutionalize that which is now but a creature of legislative action, unless we go in the direction indicated by the gentleman from Ulster [Mr. Cooke]. If the city of New York and the city of Buffalo—represented here, the one by three judges of the superior court, the other by three judges of the superior court and one of the court of common pleas—do not see fit to attend to their duties here, we have the right to say, so far as they are concerned, whether the local courts shall be constitutionalized at all. This general provision will authorize other counties of this State, whenever they shall have a population sufficient for that purpose, to have similar courts in them.

Mr. COMSTOCK—As to the judges of the superior court of Buffalo—for that court is involved in this proposition—one of them I know has been quite sick, which has prevented his attendance here since the September session, and the others have been engaged in attending a general term of their court in the city of Buffalo, and I think are now so engaged. I believe, also, some of the judges of the superior court of the city of New York, who are delegates upon this floor, are similarly engaged. Perhaps the gentleman from New York [Mr. Develin] can tell whether that is so or not. He says that is so. I have no doubt that they would desire to attend the Convention and participate in the discussion of this very important subject. This is an evening in the week when it has been very rare indeed to have a quorum to discuss any question. I think, above all other questions, such a one as this should not be disposed of without a larger attendance.

Mr. BARKER—I hope the committee will not dispose of this question on the ground of the absence of the gentlemen who compose the superior court of Buffalo. One of the members from that city, we all know, has been ill for many weeks, and when in health is constantly in his seat, in the intelligent discharge of his duties. The others are, I am informed, engaged in the discharge of their judicial duties, and necessarily absent. I am satisfied, if they were here, they would not participate in this discussion, whether the court of which they are judges should be constitutionalized or not. They would refer it to the wisdom of this committee and the Convention, and I think the reflections of the gentleman from Onondaga [Mr. Alvord] are quite unbecoming.

Mr. FERRY—It seems to me that the amendment proposed by the gentleman from Ulster [Mr. Cooke] is unnecessary. In the eighteenth section provision has been made in this wise "Inferior local courts, of civil and criminal jurisdiction may be established by the Legislature in cities, and such courts, except for the cities of New York, Brooklyn and Buffalo, shall have an uniform organization and jurisdiction in such cities." This clearly gives the right to establish inferior local courts, and meets the objection suggested by the gentleman from Onondaga [Mr. Alvord] that such legislative action as has heretofore been resorted to cannot be adopted hereafter in regard to this matter. It seems that the committee have simply presented the organization of these particular courts in these cities; do not provide by constitutional enactment that there shall be no others, but leave that question open to be regulated as the Legislature shall see fit.

Mr. E. A. BROWN—I move that the consideration of section 16 be postponed for the present, and that we proceed to the consideration of section 17.

The question was put upon the motion of Mr. E. A. Brown, and it was declared carried.

The SECRETARY then read section 17 as follows:

SEC. 17. All the judges and justices of the courts of record, hereinbefore mentioned in this article, shall receive at stated times for their services, a compensation to be fixed by law, which shall not be diminished during their respective terms of office.

Mr. GRAVES—I move to amend that section by adding after the word "diminished," the words "or increased."

Mr. COMSTOCK—I hope that motion will not prevail. It has led to a great deal of difficulty and a great deal of embarrassment and trouble under the existing Constitution; because it has compelled judges of the same grade —

Mr. RUMSEY—Will the gentleman allow me to state that in the report of the Committee on the Powers and Duties of the Legislature there was a provision of that kind applicable to all officers except the judiciary, and that has been adopted. It leaves the Legislature at liberty to alter their salaries.

Mr. COMSTOCK—And that is a further reason why I hope the motion of the gentleman from Herkimer [Mr. Graves] will not prevail. I was about to say that the words which he proposes to insert into this provision have occasioned a great deal of injustice and a great deal of embarrassment, because judges of the supreme court and of the court of appeals of equal grade, equal ability and equal industry have been compelled to sit side by side, year after year, at unequal rates of compensation. This may be illustrated by what has taken place in the history of the present system. In the year 1857 I think it was, it came to be seen that judicial compensation was inadequate,

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that it was not enough to enable the judges to maintain their families; and accordingly the Legislature proceeded to raise the compensation from $2,500 to $3,500. Now, the Constitution of 1846 read just as the gentleman from Herkimer [Mr. Graves] desires this to read, "which shall not be diminished or increased." In consequence of that provision, the act of the Legislature could not take effect in favor of judges sitting on the bench. It could only apply to judges elected or appointed after the act of the Legislature was passed, and the result was, that for six years judges sat upon the bench, side by side, at unequal salaries. The Legislature passed the law because they were entirely convinced that judicial salaries were inadequate, yet it was not in their power to increase the compensation of judges who had been elected only the year or the day before, and they were obliged to abdicate their offices, or else take the compensation which had been provided by law. They could not receive the measure of payment which the Legislature provided for future judges, and which, it was universally admitted, it was just and proper that they should receive. There never was any such provision in any Constitution of this State until the year 1846, and I am very sure it was inserted without due consideration of its effect. Under all the Constitutions of the State, existing before that of 1846, the salaries of the judges were raised, from time to time, according to the public conviction of what they ought to be—salaries of existing judges, I mean, and not of future judges. As the cost of living increased, and as circumstances required, in the public estimation, in the estimation of the law-making power, the law was changed accordingly, and it took effect upon the bench. I hope this amendment may not be incorporated into this Constitution.

Mr. MORRIS—I for one hope that this amendment will not prevail. I think we pay our judges, all of them, far too little. Certainly, if we expect the highest talent which the bar can afford, we must be willing to pay for it; and if we find, from experience, that the salaries given to those judges do not procure the highest talent, I for one think the Legislature should be empowered to increase the compensation until the result is attained.

Mr. GRAVES—I am unwilling to stand upon this floor and be understood as desiring that any public officer should discharge his highly responsible duties without an adequate compensation. While I am desirous that every judge upon the bench, both in the court of appeals and in the supreme court, should receive a fair equivalent for his services, I am not prepared to accede to the position taken by the gentleman from Onondaga [Mr. Comstock], who states that there may be manifest injustice from the change of the times in continuing an incumbent at the salary fixed when his services commenced. The gentleman, of course, will readily see that there may be a change in the times so as to justify the diminution of the salary which is fixed for the judge at the commencement of his term; but you provide in this section against this equitable arrangement or this equitable application of the change of the times, so as to reduce his salary to what it ought to be. If his salary is fixed at this time at $3,500 or $4,500, with the exorbitant prices he has to pay for all the necessaries as well as the luxuries of life, if those times change so as to get back again to what they were before the war commenced, I submit whether it is just that you should pay that judge the sum of $4,500 for sitting on the bench, when the articles which it is necessary for him to purchase for his support do not require half the sum that they did at the time when he received his appointment. If you strike out of this section the word "diminished," you will then certainly present this section to the consideration of this Convention with some little degree of fairness; but you desire to retain in this section the power not to reduce or diminish his salary during his term, but to have the power to increase it, let the circumstances be what they may. It is said by the gentleman that the judge upon the bench can hardly afford to sit there and discharge his duty for the salary which was fixed at the time when he entered upon the discharge of the duties. I ask the gentleman if he has ever known in the State of New York a single instance where the judge resigned because his salary was an inadequate compensation? I do not know any. If the gentleman does he will remind me of it. I do not know of one instance where the judge, either of the court of appeals or of the supreme court, has resigned his place because there was a change of the times, and because he was compelled to pay a much larger price for the necessaries of life in proportion to the salary which he has received. This desire to add to the salary, to the fees, to the amount which the officer received at the time when he entered his office, is a growing propensity with all the officers in the community. It is not confined alone to the judges. It is not confined alone to some particular officer; but every body, now-a-days, seems to have a very strong propensity, whenever he gets into either a ministerial, an executive or a judicial office, if in his judgment the compensation is not an adequate reward for his services, to make an application to the power authorized to increase the salary and have that salary or fee increased. I desire that this propensity should be stopped, that this desire, this habit, this apparent zeal of every body who holds a public position should be stopped by some enactment either in this body or by the Legislature. I protest against leaving this matter in such a condition. When a judge goes upon the bench with a salary of $3,500 or $4,500, let him be satisfied. I do not care what you fix the sum at, the very next winter succeeding his appointment he makes application through his friends to the Legislature to increase his salary. Why? Because he says he cannot live by it. Did not he know what the salary was when he took the office? Did he not know precisely what he was to get? If he did know it, certainly he ought not to go to the Legislature asking that his salary should be increased. If he cannot discharge his duties for the price that he receives let him resign. There are enough ready to discharge those duties, perhaps as competent as he is. I protest

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against this practice of allowing public officers in any position to appeal to the Legislature the very moment they get into office for an increased compensation.

Mr. FERRY—I am entirely opposed to the amendment, as must be other members of this Convention who entertain views similar to my own as to the duties of these officers. It is already understood that my idea is that the remedy for the evils in our present judiciary system is to be found in open courts; and although this Convention may not be now ready to adopt that plan, I understand that there will be no objection to leaving the matter in such a position that the Legislature may if it shall see fit hereafter compel the judges to hold their courts open. Now, I do not want any obstacle in the form of a constitutional provision in the way of the Legislature when it shall see fit to do that. I have already stated here that when I had the honor to occupy a seat in the Legislature I made an attempt to compel the court of appeals to hold open court, and the main objection to it, as I understood from the judges themselves, was that their compensation was inadequate; and no one could gainsay that objection nor the argument based upon it. Now, in contemplation of this change, and hoping that it may be made, I desire that this subject of compensation shall be left open, but as the gentleman from Herkimer [Mr. Graves] says, I think it would be better to strike out the prohibition against lessening salaries. Probably no one in this hall has any idea that the time will ever come when there will be an attempt to lessen; and the entire provision in regard to compensation might better be left out, in my judgment, leaving the subject entirely with the Legislature. The shorter we can make this instrument the better will we please ourselves and the people.

Mr. COMSTOCK—I wish to say a few words in reply to the gentleman from Herkimer [Mr. Graves]. This question, in my judgment, is entirely exempt from one difficulty. There is not the slightest danger that the people or their Legislature will ever give too much compensation to the judges of the courts which are named in this section. This is the last danger which we have any reason to apprehend. Now, the gentleman from Herkimer asks if the judges do not know, when they are elected, what their salary—their compensation, is to be. Sir, they know what the existing law is at the time, but they do not know whether that salary will or will not be an adequate salary at some future time during their term of office. We propose here to elect judges for fourteen years if not for life. How can any man tell whether that which is adequate to the support of himself and his family to-day, will be so five years or fourteen years hence? And yet if you adopt this provision in the Constitution, it remains unchangeable and irrepealable until the next revision of the Constitution. In the mean time the judge and his family may starve, but you cannot change the fundamental law. You may drive the judge into resignation and you may be unable to get another one to sit in his place, but you cannot change the compensation attached to the office until you change the Constitution. I am asked by my friend from Herkimer whether I have ever known of any judge resigning because his salary was inadequate. I have not, sir. I know very well that a judge who has been long upon the bench and who has no professional practice to fall back upon, will retain his office as long as its compensation will enable him to keep soul and body together; but I ask if that is any reason why the people should not be just when they know and the Legislature knows what justice is. If the gentleman from Herkimer had ever reflected upon this matter seriously he would have understood better than he seems to understand, the reason of the provision that the salary of the judge should not be diminished. I admit, sir, that I would much rather have this provision stricken out of the Constitution than accept his proposition; but there is a reason of statesmanship for the provision that the judicial salary shall not be diminished. What is that reason? It is, that if you place the salaries of your judges at the mercy of the Legislature, you have then put one department of your government, which above all others ought to be perfectly independent, at the mercy of another. That is the reason why, in framing fundamental laws, we provide for the independence of the judiciary, by preventing the Legislature, from decreasing their salaries or taking them wholly away. We insert that provision not for the sake of the judge, but for the sake of preserving the various departments of government independent of one another. But, sir, there is now a special reason why a provision of the kind here proposed should not be incorporated in the Constitution. We live at a time and in a country where the currency and values are constantly changing from year to year, from month to month, and almost from day to day. Who can say to-day what the standard of value will be six months or one year hence? You provide to-day that the salary of your judge shall be $10,000 or $5,000; but can any one say how far that will go in the support of a judge and his family one year hence, or ten years hence, or fourteen years hence? It is utterly impossible to say now what will be the standard of value at any particular time hereafter. I think that this provision, prohibiting the increase of the salaries of the judges, would be the most mischievous provision which, by any possible ingenuity, could be inserted in the Constitution, and I hope it will not prevail.

Mr. HAND—I move that this section be stricken out; that there be no provision on the subject; and the gentleman's argument has convinced me of the propriety of this motion. We will suppose that when we adopt this Constitution, we fix the salary of the judge at $8,000. In these times of high prices this will be a reasonable salary, but, in the fluctuations of our currency, paper money may be abandoned and nominal values be very low, and it comes to pass that what is now worth five dollars will be worth only one dollar. Then the judge will have a salary equal to $40,000 of our present currency. That change is as likely to take place as any other. I say, therefore, that the statement of the

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gentleman, that we know nothing now about how values may range fourteen years hence, is an argument in favor of leaving this whole subject open, because we should not fix a salary that may not be diminished for the same reason that we should not fix one that cannot be increased. I think it is more probable that, in the fluctuations of values, the nominal value of commodities will be very much lower than it is now, than that it will be higher. If any change takes place at all, it is probable that the nominal value of the necessaries of life—those things which go to constitute the expenditures of a judge in the maintenance of his family—will be very much lower than they are now, so that the salary which we might fix now, as simply adequate, would at some future time be enormous. I move, therefore, that this provision be stricken out, and that the whole matter be left to the Legislature.

The CHAIRMAN—The question of striking out will be entertained after amendments.

Mr. HALE—I wish to say a word in reply to the gentleman from Broome [Mr. Hand], and also in reply to the gentleman from Otsego [Mr. Ferry], as to the propriety of striking out this section. As has been well remarked by the gentleman from Onondaga [Mr. Comstock], the reason for the insertion of this provision is a reason of statesmanship. The three departments of government—the executive, the legislative, and the judicial — should be distinct and independent. And above all things, the judiciary should be made independent; and the proposition of the gentleman from Broome [Mr. Hand] would put the judiciary, so far as their pay is concerned, entirely at the mercy of the Legislature. The Legislature would not have the power to remove the judges, but it would have power to designate a particular judge and say to him, or to say to all the judges, "You shall have no salary henceforth: you shall work without pay." Now, in regard to the amendment of the gentleman from Herkimer [Mr. Graves], I would say that prior to the Constitution of 1846, so far as I can ascertain by a hasty examination of the annotated Constitutions before me, there never was any such provision inserted in the Constitution of any State; but I find that since 1846 several States have, in imitation of our Constitution, adopted in their Constitutions a provision that the salaries of the judges should not be increased nor diminished. I wish to call the attention of the committee to the Constitution of Massachusetts. I think that Constitution has not been amended in any substantial respect since the beginning of the history of that Commonwealth. The provision in that Constitution is that "permanent and honorable salaries shall also be established by law for the justices of the supreme judicial court." They do not go further and say that the salaries shall not be increased; but on the other hand, the statesmen who framed that Constitution thought that it was necessary to insert this provision in order to secure the respectability of the bench and to secure the judges against the interference of the Legislature: "If it shall be found that any of the salaries aforesaid, so established, are insufficient, they shall from time to time be enlarged, as the general court shall judge proper." Now, it seems to me that if we are to make any provision in regard to the increase of the salaries of the judges, it should be one enjoining upon the Legislature the duty of increasing their salaries if circumstances show that the amount fixed at the beginning of their terms are inadequate. Such was the conclusion to which the statesmen of Massachusetts came upon the framing of their Constitution. I also find provision that the salaries of judges shall not be diminished, but no provision against their being increased in the Constitutions of Alabama, Arkansas, Delaware Kentucky, Louisiana, Maine, Mississippi—in every one of the old Constitutions made prior to 1846, the contents of which are stated in the annotated Constitutions. I think, therefore, upon authority as well as upon principle, we should guard the courts by a constitutional provision, against legislative interference in the way of lessening or taking away the salaries of the judges, and that we should not take any step which would prohibit the Legislature from making the salaries of judges adequate, if circumstances should prove them not to be so.

Mr. HAND—I do not see that the gentleman has answered my argument. He wants the judiciary entirely independent of the Legislature—so that they shall not be the subjects of legislative action at all. If that means any thing it means, that if the Legislature have power to enact any thing whatever, in regard to the judges, then the judges are dependent upon the Legislature. Now, if the salaries of the judges are inadequate, as the gentleman from Onondaga [Mr. Comstock] seems to think, and a poor judge should be barely able to keep soul and body together, or should find himself and his family reduced to starvation—I have never seen any judges of that kind myself [laughter]—but suppose such a case should arise—the gentleman proposes that the Legislature shall be called in to rescue the judge and his family from starvation, by increasing his salary. Now it seems to me that the same difficulty arises in such a case which he is so anxious to avoid—the judge is made dependent upon the Legislature for an increase of salary. There has been a great deal said by the lawyers upon this floor about the independence of the judiciary. I am not a lawyer myself—that is, not a technical lawyer—and I thank God for it [laughter], for they have shown in this body a want of appreciation of the real difficulties in our present judiciary, a want of fixed principles, a want of unity, a want of clearness in their discussions upon this question not only in the general principles involved, but in all the details in which they seem entirely afloat, agreeing in nothing, in a manner which is astonishing. If they have not done so, then I am no judge in this matter. [Laughter.] Now, sir, this talk about the independence of the judiciary seems to me perfect humbug—the idea that a branch of our government that is more important than any other, upon which every man's interests, his life, his reputation, his liberty, may at any time depend, should be elevated above the people, so that no influence of the electors or of their representatives can by any possibility reach

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them—it seems to me is extremely absurd. Now, I am tired of hearing that sort of thing, and I mean to say more on that subject by and by. But the gentleman has answered his own argument; because, although he insists that the judges should be independent of the Legislature, yet whenever they are likely to starve, the only way to get them out of this difficulty is to come back to this same Legislature for relief. I am opposed to putting the judges above the influence of the people, above the influence of the Legislature, above every influence or power under heaven. Their relation to the people and to the Legislature should be like that of any other important public officer, and I hope I will never live to see any branch of our government put in that position.

Mr. GRAVES—It seems to me that in the argument which is often heard from gentlemen who are in favor of retaining this section they entirely lose sight of the practical question which should control the deliberations of this Convention upon this matter. The justices or judges who enter upon the discharge of their duties are the party upon one side, and the people are the party upon the other. The judges enter into a contract to perform certain duties at a stipulated price; the people agree with them that if they will assume such a position and discharge the duties thereof, they will pay them a certain sum of money. The judges accept, or offer to enter upon the discharge of their duties. But immediately after they have thus entered upon the performance of their duties, unlike men who are parties to any other contract, they pretend that they have agreed to do this service for a sum less than what it is worth, and less than what they can afford to do it for under the circumstances, and they therefore turn around to the representatives of the people and say to them "Gentlemen, I want you to me pay an additional sum; I agreed to work for you at a less sum than what my services are actually worth." Now let us see whether there is any force in this position; because the State of New York is not a charitable institution that throws its arm of charity around the judge upon the bench, any more than around any body else. The judge has no more claim to the munificence of the people of the State of New York than has the ordinary laboring man. We have our almshouses, and our poor-houses, and our other institutions of charity, but they are not specifically directed to the relief of the judges of the court of appeals or of the supreme court. Those institutions have a prescribed mode of administering their charities, and if a judge of the supreme court, or of the court of appeals, or a county judge, wants the aid of the State as a charity, he must appeal to that charity through the ordinary channels which the statutes prescribe.

Mr. FERRY—I would like to inquire whether that argument applies to my position, that when we increase by legislative provision the duties of the judges, we should increase their compensation.

Mr. GRAVES—There is no provision in this section for the case which the gentleman alludes to.

Mr. HALE—Will the gentleman from Herkimer permit a question before he goes on?

Mr. GRAVES—Yes, sir.

Mr. HALE—It is, whether if both parties to a contract agree that it shall be modified under certain circumstances, by increasing the price to be paid, there is any thing particularly inequitable in making such increase?

Mr. GRAVES—Certainly there is, unless you make the rule general. Now, sir, the appeal of the judges is made to the Legislature, not to the persons who elect the judges, either of the court of appeals or of the supreme court, but to the Legislature, and almost without the knowledge of the constituency. In such cases the people know nothing about the application; it is an application made almost in secret, and without the knowledge of the persons by whom the judge has been elevated to his position, and with whom he contracted to do the duties of the office for a certain specified sum. Suppose I hire a young man to go into my office and discharge the duties of clerk for five hundred dollars a year, for three years. When he comes into my office board is worth five dollars a week in the neighboorhood where I reside. By a change of circumstances board is increased in price so that it is worth six or seven dollars per week; am I, therefore, absolved from my contract, or is he? Suppose, on the other hand, that the price of board diminishes so that it can be obtained at three dollars per week, shall I say to him, "Sir, I am paying you too much?" And if not, shall he say to me when board increases in price, "Sir, you are paying me too little?" Now, where is the difference? A contract is no more binding between me and my clerk than it is between the people and the judge. The great difficulty is that gentlemen do not desire to provide for a change which may make the arrangement equitable between the judges and the people. I ask is it any more inequitable that the incumbent should have his fees diminished if the necessaries of life diminish in value than it is that he should have his fees increased if the necessaries of life increase in value? Why should the judge be absolved from his contract any more than the people should be absolved from theirs? The great difficulty in this as in other matters of this kind connected with the government of the State that men make a contract to do something at a certain specified sum, and then immediately come in and pretend that they have discovered some great amount of labor to be performed in the office, or that the eating and drinking commodities of life have become more costly, and therefore they must have more pay. Now, sir, in my judgment public justice and public policy demand that there should be a uniform rule in matters of this kind, and that when a judge enters upon the discharge of his duties for a certain salary he does it just as he would enter upon the performance of any other contract, to fulfill, complete, and consummate it for the compensation which he has agreed to accept, and at the same time that it is a violation of every principle of moral right to leave the matter in a condition where the fees of the office cannot be reduced to meet the emergencies of the case, yet where they can be

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-ased to meet the desire of the incumbent of
- office.

The question was put on the amendment of
- Graves, and it was declared lost.

Mr. COOKE—I move that the committee now
- report progress and ask leave to sit again.

The question was put on the motion of Mr.
-ER, and it was declared carried.

Thereupon the committee rose and the PRESI-
-NT resumed the chair in Convention.

Mr. C. C. DWIGHT, from the Committee of the
Whole, reported that they had had under considera-
-n the article reported by the Standing Commit-
-e on the Judiciary, had made some progress
-erein, but not having gone through therewith
- directed their chairman to report that fact
- the Convention and ask leave to sit again.

There being no objection, leave was granted.

Mr. CASE—I move that the Convention do
-w adjourn.

The question was put on the motion of Mr.
-E, and it was declared carried.

So the Convention adjourned.

TUESDAY, December 10, 1867.

The Convention met pursuant to adjournment.

Prayer was offered by the Rev. JOHN F.
-WERY.

The Journal of yesterday was read by the
SECRETARY and approved.

Mr. C. L. ALLEN presented a remonstrance
- the board of trustees of the Washington
-ademy against the abolition of the Board of
Regents.

Which was referred to the Committee of the
Whole.

Mr. BARTO—I offer the following resolution:

The SECRETARY read the resolution as fol-
-ws:

Resolved, That the Committee on Revision be
instructed to amend the article upon taxation as
adopted by the Convention by adding thereto the
following: "And no property shall be exempt
from taxation on the ground of the profession or
calling of the owner thereof,"

Which was laid on the table at the request of
the mover.

Mr. BARTO—I offer this resolution also:

The SECRETARY read the resolution as fol-
-ws:

Resolved, That the Committee on Revision be
instructed to amend the article on finance, as
adopted by the Convention, by adding thereto the
following as an additional section:

SEC. —. The principal and interest of the gene-
-al fund debt, and the canal debt, under the
amendment of 1854, and the floating canal debt,
and all indebtedness heretofore created, shall be
paid in coin.

Which was laid on the table at the request of
the mover.

Mr. MERRITT—I call up the resolution I offered
on Saturday last.

The SECRETARY read the resolution as fol-
-ws:

WHEREAS, It is now probable that the labors of
this Convention will not be completed before this
chamber will be required by the Legislature;
therefore

Resolved, That a committee of three be appointed
by the President to confer with the committee of
the common council of the city of Albany, in rela-
-tion to a suitable hall and accommodations for the
sessions of this Convention, as voluntarily ten-
-dered by the city authorities, and report as early
as practicable.

Mr. GOULD—I move to amend that resolution
by inserting, "or the mayors of other cities."
The committee, I think, should not be restricted
exclusively to the city of Albany, in case greater
convenience would accrue to the Convention by
removing to some other city.

Mr. MERRITT—I do not suppose the Conven-
-tion will seriously entertain the proposition of
leaving Albany before we complete our labors.
It is to be presumed that by the holidays we
shall have so far progressed in the work, that a
very short time after that date will be required
to complete our labors. It is well known that we
have all the facilities necessary to carry on the
work of the Convention in this city. I do not
suppose it will be necessary to impose a duty
upon the committee that, in our judgment, is
uncalled for, and require them to visit or receive
propositions from other cities. I hope, therefore,
the amendment will not prevail. I do not sup-
-pose it is seriously presented.

Mr. GOULD—It is very seriously presented.
I do not know that it will be desirable to move
from the city of Albany at all, but while the com-
-mittee is charged with the subject it seems to me
very desirable that they should be allowed a wider
latitude than is proposed by this resolution. It
may be exceedingly desirable to go to the city of
New York in discussing the subject of charities,
very desirable that the members of this Conven-
-tion should see some of the larger charities of
New York in operation, that they may judge for
themselves in regard to what is said for them and
against them. I think it is possible they may be
much enlightened by seeing the operation of a
police system in the city of New York, and vari-
-ous other matters. I do not know that it will be
desirable, still I cannot see any harm in allowing
the committee a wider range.

Mr. OPDYKE—I hope the amendment will be
adopted. I think there are very good reasons
why this Convention, after the holidays, should
remove to some place other than the city of
Albany. I find by looking over the list of
members in this Convention that about forty
of them reside in the cities of New York
and Brooklyn. That fact implies that we
shall there be more certain to obtain a quorum
at all times than here or anywhere else. In the
next place, after the Legislature meets, the mem-
-bers of that body, and those who attend its meet-
-ings to procure legislation, will necessarily fill the
hotels of this place to their fullest capacity It
may be very inconvenient to obtain accommoda-
-tions for the members of this Convention. And
then, it strikes me, there is very serious objection
to the Convention sitting at the same time with
the Legislature in the city of Albany: we desire
to have our deliberations as distinct as possible
from the deliberations of that body. I think
there are good reasons, without saying why, that
the Convention should meet at a different place.

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Certainly there could be no harm in extending the limits of the proposed inquiry. I hope the amendment will be adopted.

Mr. ALVORD—I hope we will settle this matter directly here and have no more to do with the question in reference to locality after the holidays. Now, sir, we are very nearly, I trust, through with our labors, and a fair amount of work between now and the 7th day of January will probably bring us quite near to a close, if not entirely. We have our printing done in the city of Albany, under an arrangement already made with the Comptroller. If we go anywhere else, we have to remove, at very great inconvenience, at least so far as regards the matter of printing. We very often adjourn in the evening, and desire printing done by the next morning. If we go to New York, we must have another contract, otherwise we will be unable to have our printing before us until the expiration of twenty-four or thirty-six hours after it is ordered. Another thing; we have a very large amount of impediments in the shape of documents, and these will be removed at very considerable trouble, if not expense. Again, we have State officers, and it may be necessary in the final closing up of our matters to have access to these officials for the purpose of finding out what we desire in reference to our business. I hope, therefore, taking all these things into consideration, and the fact, as gentlemen have come to the conclusion that it is a fact, that a very short time will be required by this Convention to close its labors after the 7th of January, that we will conclude to remain here. I have no doubt that we can find abundance of accommodation in Albany; I have no question whatever in regard to that matter. If gentlemen will take very little trouble they can find places where they can stop two or three weeks in Albany as well as in New York. In answer to my friend from Columbia [Mr. Gould], I think we shall find ourselves going to New York merely for a holiday; and instead of looking into the question of charities, we will look into some other questions that will not be as beneficial to ourselves and our constituents.

Mr. MORRIS—I desire that this amendment may not prevail, because the moment this resolution has been disposed of, I propose to call from the table the resolution offered by myself on the 25th of November, having in view the sending of a committee to New York for the purpose of ascertaining what accommodations may be had there. The time is limited between this and Christmas, and it will take several days for the committee having the subject under consideration, to get information concerning available rooms in Albany. It will therefore be judicious and safe for a committee to visit New York to ascertain what can be done there. In regard to conferring with the mayors of cities, I have myself personally conferred with the mayor of the city of New York, and he has given me to understand the matter is not within his control, but more properly belongs to the board of supervisors.

Mr. COMSTOCK—I hope the amendment offered by the gentleman from Columbia, [Mr. Gould] may be adopted. I believe it is a very great mistake to suppose that the labors of this Convention will be finished, carefully and deliberately finished, within the time stated by my colleague from Onondaga [Mr. Alvord]. In the first place, can any one tell how long this discussion upon the judiciary article will be continued? How long will the discussion upon the subject of charities require? How long will the discussion upon the two opposing articles offered from the committee upon the subject of prohibitory legislation require? There are two articles proposed to the Convention diametrically opposed the one to the other, and it will require a long discussion and debate in the Committee of the Whole. And then, when you take up that much vexed and very important question of the government of cities in this State, can any one now undertake to define the length of time which will be required on that subject? And finally, when we shall have closed the debate upon these different articles, and there are others which I could enumerate, it will take certainly a number of days for the Convention carefully to go over the whole work and put it in proper connection and form. According to the best estimate which I can make, and I believe it to be a true one, the whole time yet to be occupied by this Convention will not be less than sixty days. This work is on our hands now, as long as it has taken (and that is probably somewhat too long), and I am in favor of doing it up deliberately and carefully before we send it to the people for their acceptance or rejection. Now, in regard to remaining in Albany. I believe when the Legislature arrives here and the lobby, there will be but little room for the accommodation of the members of this Convention. It will be found that the hotels and houses in this city will hardly accommodate these three departments of the public service. I think, therefore, we had better adopt the amendment of the gentleman from Columbia [Mr. Gould], in order that the whole subject of removal may come before us.

Mr. MERRITT—I would like to ask the gentleman whether he proposes to vacate his boarding place on account of the Legislature? We surrender this hall, and that is all.

Mr. COMSTOCK—I may be able to keep my room at the hotel, but that is not the whole question. There is no public necessity of remaining in this city. I cannot conceive of any purpose whatever for which we will desire to consult the State officers hereafter. If any gentleman can suggest any further information to be called from the departments, let that suggestion be made. I think there is no further occasion to be brought in communication with them. In regard to the removal of our documents, that is a very slight trouble—a very small inconvenience. I believe we shall be far less likely to keep up a quorum of this body by remaining in this city than we will by going to New York, and I would prefer going even to Buffalo.

Mr. S. TOWNSEND—I regret that no gentleman in this Convention has given us his opinion as the result of his deliberations as to whether the Legislature has the indisputed right to hold their sessions in this building. We might allow them to meet here on the day specified in the

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statutes for their convening, and then they could adjourn to some public place in this city, having first made their arrangements therefor. I agree with the gentleman from New York [Mr. Opdyke], we can get our printing done and have it carried down by the express companies within twelve hours after it is ordered, to the city of New York. There are a number of public buildings in that city admirably suited for our purpose. There is an arsenal there having a splendid room, but that, perhaps, would not be a fit place. I have no doubt that the authorities of the city would make arrangements for the accommodation of this body. This Convention more closely represents the sovereignty of the people than any which has ever before met under any Constitution of this State. Certain provisions of the Constitution of the United States are the only limit on its powers, and it is obvious therefore that it cannot be compelled to give way before an Assembly of delegates, however respectable they may be, and improved, as I hope they will be—hope, I say, sir—in character when contrasted with the men who have preceded them in recent years. Why, sir, it is competent for this body to-day to declare by ordinance that the Legislature shall be adjourned for two years, and then have biennial sessions of a few weeks only. No man thinks of doing it; no man has the remotest idea of proposing any thing of the kind, yet the constitutional power is here. I hope we shall go as far as even the Convention in Massachusetts did, and submit our articles, nine or ten, or any other number, if need be, to the people, upon a mid-summer's day, for their calm reflection and decision. With these views, I shall vote for the amendment of the gentleman from Columbia [Mr. Gould]. I hope the Convention, if they move from this city, will give the committee power to entertain some proposition or overture that may be made by the city of New York. I will further say, in reference to the duties of this body, that the gentleman from Onondaga [Mr. Alvord] is entirely wrong in thinking that we can close up this matter at so early a day. Our experience has shown that to be impossible. We do not know when we will get over even the judiciary article. The gentleman from Broome [Mr. Hand], last night, showed how utterly diverse were the opinions of that large body of men, the lawyers in this Convention. It is, therefore, the remaining members, who are not lawyers, "laymen," as it is customary to designate them here, who are to sit in judgment upon the arguments made here, for as a matter of legal precedence the litigants should have no vote. The Convention has made many improvements. The article increasing the salary of the Legislature is a decided improvement. There is another question which has been alluded to, only incidentally, and that was in reference to the employment of prison labor on the canals, which belongs to and is involved in the prison management. I undertake to say, as a man of business, and one with more than ordinary opportunities of public investigation, that if the Convention addresses itself properly to the subject of the management of prisons, they will be able to save in the expense of the prisons to the State in one year the large amount that the sitting of this Convention will have directly cost the people. The prisons now cost half a million of dollars every year more than they produce, while under proper management they should yield the State a profit of half a million, containing as they now do over three thousand convicts. That question alone is a subject for earnest, profitable investigation. If we can save a million dollars to the State we most assuredly should do so. The matters of public education, charities, etc., also require careful supervision.

Mr. AXTELL—I move the previous question.

The question was put on the motion of Mr. Axtell, and it was declared carried.

The question recurred on the amendment of Mr. Gould.

Mr. ALVORD—I call for the ayes and noes on the question now before the Convention.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was put on the amendment of Mr. Gould, and it was declared lost by the following vote:

Ayes—Messrs. Axtell, Barto, Beadle, Bell, Bergen, Bowen, E. P. Brooks, E A. Brown, W. C. Brown, Clarke, Comstock, Cooke, Daly, Duganne, Eddy, Ely, Endress, Flagler, Fowler, Fuller, Gould, Hammond, Hand, Ketcham, A. Lawrence, M. H. Lawrence, Mattice, Merwin, Morris, Opdyke, President, Prindle, Prosser, Rogers, Root, L. W. Russell, Schell, Sheldon, S. Townsend, Tucker, Van Campen — 41.

Noes—A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Baker, Barker, Beckwith, Bickford, Case, Corbett, C. C. Dwight, Folger, Francis, Goodrich, Graves, Hadley, Hale, Harris, Hiscock, Hitchcock, Houston, Kinney, Krum, Lee, Ludington, McDonald, Merrill, Merritt, Miller, A. J. Parker, C. E. Parker, Potter, Rathbun, Reynolds, Rumsey, Seaver, Smith, Spencer, M. I. Townsend, Wakeman, Wales, Williams—43.

Mr. FULLER—I move a reconsideration of the vote just taken.

Objection being made, the motion was laid on the table under the rule.

The question was then put on the adoption of the original resolution, and, on a division, it was declared adopted by a vote of 45 to 31.

Mr. MORRIS—I desire to read to the Convenvention a letter which I received this morning, in order to offer a resolution in connection with the subject. I will read the communication:

"Head-quarters Seventh regiment—"

Mr. RATHBUN—I rather think the Convention is getting tired of this. I rise to a point of order. Is not this question now disposed of?

The PRESIDENT—The Chair did not understand the gentleman from Putnam [Mr. Morris]. What was his proposition?

Mr. MORRIS—I desire to read a letter I received this morning, in order to offer a resolution.

The PRESIDENT—The gentleman will lay his foundation by offering his resolution.

Mr. MORRIS—The resolution I desire to offer is a tender of the thanks of this Convention to the members of the Seventh regiment for offering to this Convention the use of their armory in

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the city of New York, provided this Convention desires to remove to that city. The letter is very short and the reading of it will best explain the resolution I have to offer.

The PRESIDENT—The communication will be received.

Mr. MERRITT—I think it will be well to refer that communication to a committee.

The PRESIDENT—The communication will first be read and received by the Convention.

Mr. SEAVER—I would inquire if there was any such communication made to this Convention?

The PRESIDENT—The gentleman desires to make it. He is in order and will proceed.

Mr. MORRIS—[Proceeding to read.]

HEAD-QUARTERS 7TH REGT. NATIONAL GUARD, CITY OF NEW YORK.

"GENERAL: In reply to your—

Mr. ALVORD—I rise to a point of order. I do not want to debate it; but a private letter from any one to a member of this Convention is not such a document as the Convention can receive.

The PRESIDENT—The Chair understood the gentleman to say that he had a communication addressed to this Convention.

Mr. MORRIS—Mr. President, it seems to me very proper that any one member of the Convention may be addressed on a subject which has for its object the making of that subject known to the members of this Convention.

The PRESIDENT—The communication to the gentleman from Putnam [Mr. Morris] is not in this connection a communication to this Convention.

Mr. MORRIS—I desire to call from the table a resolution I offered on the 25th of November.

The SECRETARY read the resolution as follows:

WHEREAS, It now seems probable that this Convention may not be able to complete its labors before the 24th of December, and

WHEREAS, This assembly chamber will be required by the Assembly immediately after the holidays, and

WHEREAS, The act creating this Convention permits it to adjourn to any other place within this State; therefore

Resolved, That a committee of two be appointed to proceed to the city of New York and ascertain what suitable public hall can be obtained for the use of the Convention after January 1st, 1868.

Mr. ALVORD—I rise to a point of order. We have just passed a resolution appointing a committee.

The PRESIDENT—The point of order is well taken.

The Convention again resolved itself into a Committee of the Whole upon the report of the Committee on the Judiciary, Mr. C. C. DWIGHT, of Cayuga, in the chair.

The Chairman announced the pending question to be the consideration of the seventeenth section, which the SECRETARY read as follows:

SEC. 17. All the judges and justices of the courts of record herein before mentioned in this article shall receive at stated times for their services, a compensation to be fixed by law, which shall not be diminished during their respective terms of office.

Mr. FOLGER—I offer the following amendment:

The SECRETARY read the amendment as follows:

Add to section 7 the following:

"In addition to any other compensation the Legislature shall provide for a per diem allowance to the court of appeals for every day's actual attendance upon the sessions of the court or upon the consultations of the judges thereof.

Mr. FOLGER—I offer this amendment because I consider it a practical means, if carried into effect, of reaching a practical difficulty and securing a practical end. I think if any one has observed he will see that the difficulty with the present judicial system is mainly the difficulty of delay in the disposition of the business, and he must have seen that that delay is mostly to be found in the court of appeals; that there it has its greatest development, if not its chief place of abode. I conceive that delay to arise from two reasons. One is that the first court of appeals was a shifting court, and not composed from year to year of the same body of judges. That difficulty has been obviated by the article already adopted. I conceive that the second difficulty exists in the fact that the sessions of the court are comparatively short, and that immediately upon its close the judges disperse and go to their homes, each one laden with a certain number of cases upon which he is to form his opinion, and at the next session to report that opinion to his fellows. He goes home and forms his own opinion, uncertain what are the views of his associates, and finds or thinks it necessary to prepare a lengthy argument, not so much to announce the law as to convince his peers of the law, as he conceives it. So every case has not only the argument of counsel at a trial, but the argument of a judge to whom the case has been committed—an argument to convince his fellows that he is right in his decision. Take the last three or four volumes of the reports of Tiffany. I think that any lawyer of considerable practice will wonder why there should have been a necessity for a three months' interval between the arguments of many of the cases there reported and the determination of it—three months' lapse of time before the decision was announced. It does strike my judgment that if seven judges of a court of appeals, immediately after the argument of these cases, had met for conference together upon them, and had exchanged their views upon them, a decision would have been arrived at upon the spot, without the necessity of a three months' interval for deliberation, and without the necessity of lengthy written opinions. Now, why do they separate and go away, immediately upon the close of a session, to their homes? It is for the reason that their salaries are so meager as a compensation for the talent, and as a support for the respectability and the position required in a judge of the court of appeals. Their salaries are hardly sufficient for their support in the circle of society in which they move. So they go from Albany to save the expense to which they would be put if

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remained here. So, at least, I am informed me who has sat upon the bench of that court. -ose by this amendment to hold out an in- ment to the judges to remain together in session, and in longer session, and I conceive e that end is attained, and they shall remain nger session, and in consultation after the ms are closed, we shall have reached a s of very materially disposing of the busi- f the court of appeals, quicker than it is speeed of, and will have, in a great meas- obviated the long delay in the administration stice. Gentlemen may say this is a mercen- view to take of this question. But we are ng with mercenary matters in this Conven- f questions of finance and money, and the of compensation for services by money, and holding out of money as an inducement to ser- are mercenary. We are dealing with prac- questions, and asking ourselves how, by the ation of means, we shall remove practical ulties; and human nature is a thing which s itself practically. I think if any gentle- will consult his knowledge of events that pire in this State, he must see that men are ded upon by just such inducements as these. as we go outside of this hall, we hear that if sojourn for more than three days we lose our . And if we are not above the address of ecuniary considerations of this character, why ld we say that any other body of gentlemen this State, now constituted, or to be hereafter stituted, are above mercenary considerations? y give a compensation in money to the court ppeals at all? It is mercenary, and you ad- s to a judge of that court a mercenary argu- t when you address to him the argument of y. Then why not add to the other induce- ts he has for remaining here, by giving him a diem allowance in addition to his salary? e whole matter is left to the Legislature, and y may consider the *per diem* allowance in ad- on to the salary, when they come to fix the ary; and they may hold out, if this amend- t is allowed, an inducement for the judges of court of appeals to remain together and finish the business immediately upon hearing the ument.

Mr. COMSTOCK—I would suggest to the gen- man from Ontario [Mr. Folger] that he put the rd "shall" in place of the word "may," so as make it imperative upon the Legislature.

Mr. FOLGER—I had it "shall," but I thought haps it would be better to leave the matter to discretion of the Legislature.

Mr. COMSTOCK—The Legislature never will it if you leave it to them. I move to substi- te the word "shall" for the word "may."

Mr. FOLGER—I accept the amendment.

Mr. COMSTOCK—I will add a word or two. I nk the gentleman is altogether right in the w he presents. No one who has not examined closely can conceive the inconvenient working the present system. We all know very well t the pay of the judges is quite inadequate for eir services. They cannot, therefore, afford to main for long periods from their homes, attend- g the terms of the court. Why, sir, if they ould commence a term in the month of Decem- ber, as the court of appeals ought to do, and should continue that term during the winter and into spring, their hotel expenses would nearly exhaust their salaries. It is not in human nature to do this, and judges are very much like other men. As the matter now is, it is the interest of the judges to forsake their duties at the seat of government where the terms are held, and return to their homes as quickly as they can. It is, therefore, the practice of that court now to hold a morning session and an afternoon session; to get a certain number of cases in their hands and run for their homes as soon as possible. I suppose it to be the object of the gentleman from Ontario [Mr. Folger], in his amendment, to require the Legislature simply to provide for their expenses while attending the terms of their courts, in addition to their stated compensation, whatever that may be. I hope it will pass.

Mr. ANDREWS—I cannot support the amendment which has been offered by the gentleman from Ontario [Mr. Folger]. It is claimed that the work of the judges of the court of appeals can be mainly done while the court is in actual session, that they may hear arguments in the first instance, and then decide the cases upon consultation, during the same term. The amendment provides that for this work they shall be compensated by a *per diem*, to be fixed by the Legislature, in addition to their salary. In other words, the purport of the amendment is that the judges ought to be paid by the day for the work which they actually do, and which is to complete their judicial labor, and to be paid their salary in addition. But, Mr. Chairman, this doubtless is not the intent of the mover of this amendment. It is intended to remedy what is undoubtedly a practical difficulty, and to induce the court to sit such a length of time as will enable it to dispose of the business which comes before it. Now, I believe, and I have no donbt it receives the general assent of the Convention, that the compensation of the judges has hitherto been inadequate, owing in a great degree to circumstances which have largely increased the expenses of living, requiring a larger income than was formerly required. Under the Constitution of 1846 the salary of a judge was first fixed at $2,500; a tolerably liberal salary under the then existing condition. In 1855, I believe, it was increased to $3,500. It has not been changed since for the reason that no change could be made under the Constitution which would entitle the judges in office to receive an increased compensation. Now, I desire not to be misunderstood. I believe that the salaries of the judges of the courts in this State should be adequate and ample to compensate them for their labor, and to draw to the bench men who, by their abilities and learning, will adorn it. But I do object to a system which shall be an inducement to the Legislature to fix a salary at an inadequate amount, and then attempt to eke it out by adding what is called a *per diem* for compensation during the time the court shall be in session. In my judgment it would degrade the character of the bench itself. It would subject the judges to the charge now made against the judges of this State that they leave the business of their own districts and go to the city

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of New York for the reason that they have by that mode of proceeding a *per diem* allowed them in addition to their ordinary compensation. Let us leave it, as in my judgment it is best, to the Legislature. This method of providing additional compensation which makes it the pecuniary interest of the judge to remain merely for the purpose of obtaining his *per diem*, and subjecting the judges to the censure and the suggestions which will be made, arising out of that fact, seems to me to be entirely improper.

Mr. FOLGER—What would be considered an ample salary?

Mr. ANDREWS—At least five thousand dollars. I think seven thousand dollars would not be too much. But we should leave it to the Legislature. Gentlemen may say the Legislature will not fix an adequate compensation. I suggest that the result of this amendment is to destroy the probability that the Legislature will act upon an enlightened view of this question, and determining the salary according to the value of the services which are to be rendered.

Mr. M. I. TOWNSEND—I concur with the gentleman who has just taken his seat in his opinion that the salaries of the judges had better be in gross. I believe with him that the salary should be ample. We should, if possible, secure the best talent in the State to occupy the bench, and if we are to do so we shall of necessity be compelled to adapt the salary to the condition of things in the country and to the necessity of meeting all the reasonable pecuniary expenses and wants of the gentlemen who occupy the judicial position. I find myself compelled to differ entirely with the suggestions of the gentleman from Ontario [Mr. Folger]. I do not believe that the best and most experienced judges in the State are as well prepared to decide questions immediately after the hearing of arguments, even after consultation with their brethren on the bench, as they will be after they have had a month or two to examine the letter of the case and the letter of the former decisions as applicable to the case before them. I believe that when men are dealing with the interests of suitors there ought to be retirement and privacy and deliberation before a decision is arrived at. Except it may be in some cases where the decision to be arrived at is obvious at a glance. I cannot believe that our judges of the court of appeals have been in error in writing long opinions, which some of us may, in some instances, have deemed to have been too long drawn out. I believe that by doing so they have more accurately arrived at the real rights of the parties, and have been better able to convince their brethren of what the true decision should be; and have furnished to the State what is worth more than all the salaries of all the judges—a discussion of the principles involved in the decisions which the judges make. I do not believe that any amount of money conceivable, as applied to the salaries of the judges, would compensate this State for taking away the discussions which the judges of the court of appeals are in the habit of annually publishing to the legal profession. I believe that it is the best part of a lawyer's education to read the opinions of the judges. My friend says they are lectures, and if my friends in the profession can obtain better lectures and at less expense anywhere, if they will inform me, I will agree to avail myself of those lectures and pay expenses. There is no difficulty; we ought to get good lectures (if gentlemen choose to call them so) from a court adequate to discharge the duties of their position. I do not believe that the gentleman from Onondaga [Mr. Comstock], who spoke upon this subject, following my friend from Ontario [Mr. Folger], I do not believe that he has ever done this State injustice in the reasonably long opinions which he has from time to time read before the court and which have been published in the books. I certainly have never found one of them that was not worth the full time and expense—of myself at least—in purchasing the book in which it was contained and reading the opinion. I do not believe, sir, that we can adopt a sort of "short Delworth" mode, as Jack Downing said, of getting justice. If we are to go back to the Turkish system, where two men go before the cadi and each tells his own story, and the cadi is to bastinado one side or the other; I really hope that if that mode shall be adopted in this State there will never be a mistake made and the bastinado applied to the counsel instead of the parties themselves. I certainly shall withdraw when that mode of procedure is adopted. I believe this mode of writing opinions is not in vain. I believe it to be, as it is practiced, a great benefit to the State. But while I would pay as liberally as the most liberal for the services of the judiciary, I would not, by any course that should be taken, render it for the interests of the judges to decide summarily without that investigation which alone, in my opinion, can prepare even the greatest judicial minds to decide causes.

Mr. KETCHAM—I concur entirely in the suggestions of the honorable gentleman from Onondaga [Mr. Andrews], and I offer the following substitute as an amendment, with a view to accomplishing the object indicated by his remarks:

SEC. 17. All judges and justices of courts of record mentioned in this article shall receive at stated times a compensation to be fixed by law.

Mr. FOLGER—Is not that already in the section under consideration?

The CHAIRMAN—The Chair is unable to perceive wherein the amendment differs, except by striking out the last clause.

Mr. KETCHAM — My substitute omits the word "the" wherever it occurs in line one, and the word "hereinbefore" in the second line, and all after the word "law" in third line, to the end of the section, and leaves the whole subject of compensation to be determined by law, that is by the action of the Legislature, and applies to all judges and justices of all the courts of record including county judges, as well as those provided for in the preceding sections of the article, and indeed this is the main object of my substitute.

Mr. A. J. PARKER—I agree entirely in the justice, propriety and policy of the amendment offered by the gentleman from Ontario [Mr. Folger]; and I am glad to see that although there is some difference of opinion on other points, all

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that the salaries of the judges should be
. Now that this provision thus offered
not detract from the liberal compensation
I trust will be given them by the Legisla-
I propose to offer an amendment which
provide that this sum per diem, which is
ed, shall be for expenses, so that the Legis-
e may ascertain what are the fair and proper
ses per diem and allow for these, in addi-
to the salary that shall be fixed. I propose,
ore, after the words "court of appeals,"
amendment, to insert the words "for ex-
s." There is an apprehension felt, in this
of the house, that unless this is thus ex-
ed, it may be made such a part of their com-
sion, or be deemed to be such a part of their
pensation as to lessen the annual salary
would otherwise be fixed by the Legisla-

e question was put on the adoption of the
dment offered by Mr. Ketcham, and it was
ed lost.

A J PARKER moved to amend by in-
g after the words "court of appeals" the
ds "for expenses."

SPENCER—While, perhaps, it would not
objectionable to try this mode of compensa-
as an experiment, it seems to me that it
ld not be advisable to incorporate it in the
stitution as a permanent rule. This mode of
pensation, which is here proposed, has been
ployed in regard to a great variety of officers in
State, and it has been found, in regard to many
them, to be accompanied with great abuses,
to say evils. And in regard to at least some
these abuses and evils, we have found them to
so great, that the rule has been changed and
compensation given, not by way of per
m, and for expenses, but at a fixed salary.
evil which has grown out of this method of
pensation has been this: that the officer
o is paid his per diem for his services managed
employ himself for a great many more days
an were actually necessary for the performance
the services. And to such an extent did that
grow, that in one case, as I have been in-
med, in a given year, one official charged his
ers for a greater number of days than there
e days in the year. And in regard to com-
sation to meet expenses, that evil has been
nd to be very great, and a thousand methods
ve been invented, by those who occupy official
ces, of multiplying the expenses attending
performance of their official duties; and as
s been suggested here, a judge, although he
ght to be, is not always above the influence of
ese considerations.

COMSTOCK—There certainly will be no
putation to prolong the services if the al-
ance is for expenses only, according to the
dment proposed by the gentleman from Al-
y [Mr. A. J. Parker]. It was not my idea
t this provision would increase the sum total
judicial compensation, but I thought that five
ndred dollars or seven hundred dollars be-
wed upon a judge in the way of covering his
enses merely, would do a great deal more for
e public service than three times that amount
id to his annual salary.

The question was put on the adoption of the amendment proposed by Mr. A. J. Parker, and, on a division, it was declared lost, ayes 26, noes not counted.

The question recurred on the amendment offered by Mr. Folger.

Mr. GRAVES—I offer the following amendment:

To strike out all after the word "received," in the second line, and to insert, "a yearly salary of five thousand dollars, which shall continue for the term of ten years. At that time the Legislature shall continue the said salary, or increase or diminish the same, so as to make the compensation a just one."

I offer this amendment because, in my judgment, this body is as competent to fix the amount to which these judges are entitled as any body that will ever assemble in the State of New York. There are here about one hundred lawyers, all of them, or most of them, acquainted with the duties which will devolve upon the judges and the responsibilities of their position. They know the expenses that are attendant upon the discharge of that duty certainly as well, if not better, than the Legislature can judge of them. This sum of five thousand dollars is, in my judgment, a reasonable and fair compensation for the judge for such services as he will be called upon to perform; that sum will pay him for his services and defray the expenses incident to the discharge of his duties. It is a fixed salary for the term of ten years. There can hardly be any doubt but the condition of our country will be such as to justify the continuance of that salary for that length of time. At the end of ten years my amendment affords the Legislature the opportunity, if, in their judgment, the circumstances or conditions of the country require it, to change that salary or to continue it at that sum. If the Legislature can fix that, why can not this Constitutional Convention? It settles all questions on the subject, and saves that constant application to the Legislature for changing of the salary which is now made almost an absolute duty of the judge if he desires to preserve his identity as a man, because he must, as a matter of course, have something to pay his expenses if he occupies that position and finds the compensation allowed him an inadequate one. And certainly, at the prices now paid, the sum of $3,500 is a meager salary for the services rendered and the talent employed. I would, therefore, give him a reasonable salary, and let that salary be fixed by this Convention for a certain length of time.

The question was put on the adoption of the amendment offered by Mr. Graves, and it was declared lost.

The question was then put upon the adoption of the amendment offered by Mr. Folger, and, on a division, the vote was announced 26 ayes and 32 noes—no quorum voting.

The CHAIRMAN—The Chair is aware that there is a quorum in the house. Gentlemen will please to vote.

The question was again put on the adoption of the amendment offered by Mr. Folger, and, on a division, it was declared lost, by a vote of 35 to 46.

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Mr. KRUM—I offer an amendment to section 17, to add after the word "services," in the third line, the word "expenses," so that the section shall read:

SEC. 17. All the judges and justices of the courts of record hereinbefore mentioned in this article shall receive at stated times for their services and expenses a compensation to be fixed by law, which shall not be diminished during their respective terms of office.

I desire to say that, as the section now stands, it limits the Legislature to a compensation for the services of the judges, while, with my proposed amendment, it gives the Legislature power to allow compensation not only for services but for expenses, and leaves the whole matter of services and expenses of judges in the hands of the Legislature.

The question was put on the adoption of the amendment offered by Mr. Krum, and it was declared lost.

No further amendment was offered.

The SECRETARY read the next section as follows:

SEC. 18. There shall be elected in each of the counties of this State, except the city and county of New York, one county judge, who shall hold his office for seven years. He shall hold the county court and perform the duties of the office of surrogate. The county court, as at present existing, shall be continued with such original and appellate jurisdiction as shall from time to time be conferred upon it by the Legislature. The county judge, with two justices of the peace, to be designated according to law, may hold courts of sessions, with such criminal jurisdiction as the Legislature shall prescribe, and perform such other duties as may be required by law. The county judge shall receive an annual salary, to be fixed by the board of supervisors, which shall not be diminished during his continuance in office. The justices of the peace for services in courts of sessions shall be paid a per diem allowance out of the county treasury. In counties having a population exceeding forty thousand, the Legislature may provide for the election of a separate officer to perform the duties of the office of surrogate, whose term of office shall be the same as that of the county judge. Inferior local courts, of civil and criminal jurisdiction, may be established by the Legislature in cities; and such courts, except for the cities of New York, Brooklyn and Buffalo, shall have an uniform organization and jurisdiction in such cities.

Mr. HALE—I move that we return to the consideration of those sections that have been passed over. I believe that the committee is as full this morning as it will be, and we may as well return to their consideration.

Mr. C. L. ALLEN—I desire to offer an amendment to the section now pending, but it will not be as appropriate now as it will be after we shall have passed upon the preceding sections, as proposed by the gentleman from Essex [Mr. Hale].

Mr. FOLGER—Why can we not go on with it now as well as to be jumping backward and forward in this way?

The question was put on the adoption of the motion of Mr. Hale, and, on a division, it was declared lost, by a vote of 23 ayes—noes not counted.

Mr. COMSTOCK—I move that we return so far as to finish the organization of the court of appeals.

The CHAIRMAN—To what section would that require the committee to return?

Mr. COMSTOCK—It would relate to the filling of the vacancies in the office of the chief justice of the court of appeals, and I will offer an amendment upon that subject if we return to it. I will offer mine as a substitute for section 10.

Mr. HALE—In regard to this matter of returning to the sections which we have passed over, it is not, perhaps, a matter of very vital importance, but these sections were passed over last evening for the reason that the attendance was small, as it usually is on Monday evening, and it was thought that this important matter might better be deferred till this morning, and that after we had taken them up this morning we should go on in order and leave nothing unfinished. This seventeenth section is one of a series of sections relating to county courts; and the organization of county courts may depend somewhat upon the action of the Convention with regard to the organization of the supreme court. For this reason, therefore, it seems to me, we should get along with our work much better, if we should now finish the court of appeals, and then take up the supreme court and determine that subject, before we proceed with our labors in regard to the county courts.

Mr. C. L. ALLEN—With regard to the question put by the gentleman from Ontario [Mr. Folger], perhaps he did not understand my object in asking that these former sections should be disposed of before my amendment. The reason is this: My amendment relating to the organization of county courts, its propriety will depend, in a great measure, upon the disposition made by the Convention of the previous sections passed over last evening. Their decision with regard to those sections may vary the propriety of the adoption of the amendment which I propose to offer to the eighteenth section with regard to the county courts and to the surrogate's court. For that reason I thought that we might with propriety go back and consider the sections which were passed over last evening for the reason, as stated already, by the gentleman from Essex [Mr. Hale], that there was not a full house and the questions could not be fully discussed. If they were now discussed and decided one way or the other, the propriety of the amendment which I propose to offer to the eighteenth section, will depend, in a great degree, upon that decision. This is the object that I had in view in proposing that those sections should be disposed of before the remaining sections should be considered.

The question was put on the adoption of the motion of Mr. Comstock to recur to the tenth section, and it was declared carried.

The SECRETARY read the section as follows:

SEC. 10. All vacancies in the office of judge of the court of appeals shall, as they occur, be filled by election by the electors of the State, and all vacancies in the office of justice of the supreme court shall, as they occur, be filled by election by

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...s electors in the several departments, at the general election next after the vacancy shall occur. ... the Governor by and with the advice and ...sent of the Senate, when the Senate is in ...sion, and the Governor when the Senate is not ...session, may fill any such vacancy by appoint... which shall continue until the first day of ...ary next after such general election.

Mr. COMSTOCK—As we have now organized ...e court of appeals, it becomes necessary to ...ke a distinct provision for filling vacanies in ...t court. The office of chief justice is created ...a distinct office from that of associate judge or ...ice. It therefore becomes necessary to recast ...e tenth section, or, more correctly speaking, ...haps, to have a distinct and independent sec... for filling vacancies in the office of chief jus... and judge of the court of appeals. For that ...pose I offer the following substitute in the ...ce of the tenth section, although, when we ...e to arrange the article, I think its proper ...ce would be between the second and the third ...tions, as relating to the organization of the ...rt of appeals:

"Where a vacancy shall occur in the office of ...ief justice or associate justice of the court of ...peals, three months prior to a general election, ...e same shall be filled at such election; and un... any vacancy can be so filled, the Governor, by ...e advice and consent of the Senate, if the Sen... shall be in session, or if not, the Governor ...one may appoint to fill such vacancy. If any ...ch appointment of chief justice shall be made ...m among the associate judges, a temporary ap...intment of associate judge shall be made in like ...nner. But in such cases, the person appointed ...ief justice shall not be deemed to vacate his ...ce of associate judge any longer than until the ...piration of such appointment. The powers ...d jurisdiction of the court shall not be sus...ended for want of appointment, when the num...er of judges is sufficient to constitute a quorum. ...ll appointments under this section shall con...ue until the first day of January next after the ...ection at which the vacancy can be filled."

As we have framed what may be called the ...rganizing section of the court, the office of chief ...stice is a different one from that of associate ...dge, and it becomes necessary, therefore, to ...rovide distinctly for filling a vacancy of that of...ce. Of course, I suppose, we all agree that when ...vacancy in that office occurs, until it can be ...pplied by election, it shall be filled by the Gov...rnor, or the Governor and the Senate. But it ...ill be very convenient, and probably very proper ...n most cases, for the Governor to take one of ...ose who are on the bench as associate judges ...o fill that situation. If that should be done, the ...erson who is elected from the associate judges to ...ll the office of chief justice ought not, by the ac...eptance of that situation for a few months, to ...ose his tenure as associate judge, which may last ...r ten years. My amendment provides for that ...situation. It provides also that a vacancy, ...whether in the office of chief judge or associate ...judge, shall not be filled by election unless the ...vacancy occurs three months before the election. ...There ought to be some reasonable intervening ...period of time between the happening of the va...cancy and the election, for the people to prepare ...for that election, and to select suitable candidates ...for the high position to be filled. Three months ...seems to me not too long, possibly two months ...may be long enough. Unless some limitation of ...that kind is prescribed this may happen—this ...danger will always exist—that your chief justice ...or one of the associate judges may die the day ...before the election, and on the morning of elec...tion a single or half a dozen votes cast in some ...remote corner of the State may elect somebody ...you never heard of for that judge of the court. ...Therefore, I think that if the vacancy happens ...within two or three months before the election, it ...should be filled by the Governor and the Senate ...until the next period of election shall come round. ...This is the general purpose of my amendment. ...I have endeavored to frame it carefully to meet ...all the requirements of the question, and of the ...situation; yet it may be capable of much improve...ment.

Mr. BICKFORD—I would suggest an amend...ment to the substitute offered by the gentleman ...from Onondaga [Mr. Comstock] so that it will ...read, "if the vacancy shall occur prior to the first ...day of September."

Mr. COMSTOCK—Say two months instead of ...three. The day of general election may be ...changed.

Mr. BICKFORD—State elections are generally ...held in November, and if the vacancy occurs be...fore the first day of September there is no hinder...ance to its being filled. I will modify my ...amendment so as to have it read sixty-five days ...instead of three months.

Mr. FERRY—I think favorably of this amend...ment, but I would like to know why the gentle...man from Onondaga [Mr. Comstock] confines his ...proposition to the court of appeals. The section ...of which this is an amendment provides for ...judges of the supreme court as well.

Mr. COMSTOCK—That would have to be the ...subject of a separate provision.

Mr. FERRY—It is not so here.

Mr. COMSTOCK—I know it is not. I propose ...to substitute this for the tenth section, and then, ...having substituted it, to put it in its place among ...the provisions for the court of appeals. Then ...we can make another provision to fill vacancies ...in the supreme court.

Mr. FERRY—My question is not precisely ...answered. Why cannot both propositions be as ...appropriately put in one?

Mr. COMSTOCK—You cannot make the same ...provision for both, because in the court of appeals ...you have a separate and distinct officer, a chief ...justice, which you have not in the supreme ...court.

Mr. HALE—It seems to me that there is a ...little embarrassment arising from the considera...tion of this section now. This tenth section, on ...which this amendment is moved, has relation to ...filling vacancies in the court of appeals and in ...the supreme court, but the amendment which is ...proposed applies only to the court of appeals—...drops out the supreme court from this section. ...It seems to me that all embarrassment can be re...moved by proceeding at once to the consideration ...of section 6 and taking up this section after

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having considered section 6 and section 8. The amendment offered by the gentleman from Onondaga [Mr. Comstock] so far as it relates to the court of appeals suggests a plan that should, I think, be adopted. But it will be noticed that section 10 speaks of *departments* in the supreme court. We have not yet determined whether we will have any departments or not, and I will submit whether it is not better that we should proceed at once to the consideration of the sixth section, and defer this subject until we have settled upon the organization of the supreme court.

Mr. COMSTOCK—If we shall adopt this section as I have read it we are done with the court of appeals. That is the reason of my wish for having it adopted now. We can then pass to the other courts. To obviate the point suggested by the gentleman from Essex [Mr. Hale], I will propose it as section 5, which has been entirely stricken out.

Mr. COOKE—I agree with the gentleman from Essex [Mr. Hale] in regard to the impropriety of proceeding with this article in the order in which we have attempted, instead of going back and taking up the omitted sections. The question of my friend from Otsego [Mr. Ferry] as to why the gentleman from Onondaga [Mr. Comstock] had not included the supreme court in his amendment as well as the court of appeals, is well answered by saying that, at present, we have provided for no supreme court. We do not know that we are to have any supreme court. We are commencing at the wrong end of the subject. It seems to me that, by going back and organizing a supreme court, we shall be prepared to act more directly upon the following sections. In that way we may group several subjects together, and so very much abbreviate the article.

Mr. BICKFORD—I will modify my amendment, with the consent of the committee, so that it shall read "two months."

The question was then put upon the adoption of the amendment offered by Mr. Bickford, and it was declared lost.

The question was then put upon the adoption of the amendment offered by Mr. Comstock as a substitute for section 10, to be inserted in the article as section 5, and it was declared carried.

Mr. HALE—I move that we now take up section 6.

The question was taken upon the motion of Mr. Hale, and it was declared carried.

The SECRETARY proceeded to read section 6, as follows:

SEC. 6. There shall be a supreme court having general jurisdiction in law and equity, subject to such appellate jurisdiction of the court of appeals as may be prescribed by law. The Legislature at its next session after the adoption of this Constitution shall divide the State into four judicial departments, and each of said departments into two districts to be bounded by county lines. The city and county of New York shall form one district. There shall be thirty-four justices of the said supreme court; ten thereof in the department in which is the city and county of New York, and eight in each of the other departments. But the Legislature shall have power to provide for an additional justice in each of said departments One-half of the justices in each department shall reside in each district of such department, at the time of their election.

The CHAIRMAN stated the pending question to be upon the substitute proposed by Mr. Spencer, which the Secretary proceeded to read as follows:

To strike out all after the word "law," in line, 3, and insert the following:

"The State shall be divided into eight judicial districts of which the city of New York shall be one, the others to be bounded by county lines, and to be compact and equal in population as nearly as may be. There shall be four justices of the supreme court in each district, and as many more in any district as may be athorized by law. The justices of the present supreme court shall be justices of the supreme court hereby established, during the term for which they were respectively elected. Provision shall be made by law for the election of justices of the supreme court by the electors of the several judicial districts."

Mr. SPENCER—The question is upon striking out all after the third line, and inserting what has been read.

The CHAIRMAN—It is so understood, and was so read by the Secretary.

Mr. M. I. TOWNSEND—I hope the amendment of the gentleman from Steuben [Mr. Spencer] may prevail. My reasons for it especially are that it will furnish a much more ready and convenient mode of transacting the business of the State, it seems to me, than that which is proposed in the report of the committee in the section as printed. Under this system we may have substantially the same state of things existing as exists now in the State, susceptible, however, of being amended, in such wise as the experience of the State, I think, concurs that our present system should be amended, to wit: by prohibiting any judge from sitting in review of his own decisions. With that exception I believe that our present system will better promote the interest of the State than any system which has been proposed. As I have already said in discussing another question—the business of the State is very large, and we ought, in establishing a judiciary system, to have an especial reference to the large amount of business that must be transacted. According to the report of the committee there are to be four departments in the State, and there is to be a general term for each department, although each department is to be subdivided into two districts making eight districts. Now, I anticipate very great difficulty in transacting the business of what we lawyers call the general term, if we adopt the departmental system. There will be then but four general terms in the State, and as the city of New York constitutes but a single district, a part of a department, as I understand the report, it will necessitate an additional district. It will create the necessity for an additional district that shall be added to the city of New York, having a general term in common with the city of New York. Now, the business of that city is enormous, and it will be certainly an unnecessary and extreme hardship to compel any portion of the State to mix its busi-

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ness with the business of that city, and hold its general term in common with the city of New York. Coming from the city of New York, if you go into any other part of the State, without having direct reference to the departments proposed to be created by the committee, it will necessitate the uniting of two extents of territory equal to two of our present judicial districts for transacting the business of the general term. Suppose it were the case that the third and fourth districts were to be united for the transaction of the business of the general term. This would unite Sullivan and St. Lawrence counties in one district and compel the lawyers to travel the breadth of that district for the purpose of transacting the business of the general term, and although, perhaps, in other sections of the State the distance traveled might not be quite as great, yet some difficulty must occur. It must occur throughout the State that any man who goes to the general term must travel about the entire breadth of the State to argue his cause, and when he gets there he will find upon the calendar of the general term business equal to two of our present districts, and must, if he would argue the cause, wait until his turn is reached in the midst of that increased business. I do not believe it to be desirable to thus put additional hardships upon the profession or upon the suitors in this State. Much has been said here about how wonderfully well the old system worked, and we have been again and again cited to the old system that existed previous to 1846. Let me for a moment call attention to the state of things that existed. We had then one supreme court. In that supreme court let it be remembered that they had only the law business of the State. The entire equity business of the State was rejected from the calendar. I examined, yesterday, the calendar of the old supreme court for July, 1846. It contained six hundred and eighty causes; and I found by examining that calendar that the entire business of the year 1843, back to a point three years and six months preceding the time when that court was held, was behindhand and undecided.

Mr. DALY—The gentleman was not present during the course of my remarks. If he had been he would have found that that particular change in the supreme court, instead of being lauded, was condemned. The very fact he has now stated was stated in the Convention of 1846 as an objection to the system.

Mr. M. I. TOWNSEND—I did not have the gentleman from New York [Mr. Daly] in my mind at all in the remarks which I made, but I referred to other gentlemen who had spoken in high terms of the state of things that existed under the old court, previous to the time when the gentleman favored the committee with his remarks. The business of the supreme court, then, was three years and six months behind, and in addition there was this entire amount of equity business. I was unable to reach the calendar in the court of chancery. But judging from my recollection, and I hope no gentleman in the committee will take offense from the fact that I say I am old enough to remember previous to 1846, because I do not wish to offend any one by saying so, but from my recollection of the state of things previous to 1846 I believe if you add the calendar of the court of chancery to the calendar of the supreme court of that day, you will find that in the preliminary court, in the courts before reaching the court for the correction of errors, there was an obstruction in the course of litigation in the State of New York equal to what exists in the court of appeals at the present day. And the change made in 1846 by which the business of the State was put out to eight distinct tribunals in the State was one of the most beneficient improvements that ever occurred in any country at any time: and I refer to this now for this reason: I would neither go back to the old system when you had but one supreme court, nor would I go back a step in that direction. I would not reduce our supreme courts from eight districts down to four. A result that certainly has benefited this State more than almost any thing else came about in consequence of this diffusion of business of the State. Previous to 1846, from 1821 down to 1846 there were scarcely a hundred lawyers in the State who argued their causes before the supreme court, and since 1846 every lawyer who assists in the trial of his own cause at the circuit expects to assist in or leading the argument of his cause at the general term; and there has been since 1846—I say it, believing that I shall be sustained by the recollection of every gentleman whose age enables him to remember the state of things previous to 1846—there has been an elevation of the intellect and professional character of the lawyers in the State.

Mr. HALE—I would call the attention of my friend from Rensselaer [Mr. M. I. Townsend] to the thirteenth section, by which he will see that the committee do not propose to do away with this system of holding general terms in all parts of the State. It says, "Provision shall be made for holding general terms of the supreme court at convenient places, in each of said districts." I mention this to show my friend from Rensselaer [Mr. M. I. Townsend] that no plan that has been proposed would do away with that system.

Mr. M. I. TOWNSEND—I am coming down—if the patience of the committee will suffer me to go so far—I am coming down to that view of the case by and by. If my friend from Essex [Mr. Hale] will allow me, I will leave that part of the argument for the present and go on with the course of the argument which I dropped. By bringing justice, as the phrase was in 1846, to every man's door, we have enabled every lawyer in the State to take rank with every other lawyer as an intellectual man, and have raised the standard of legal learning and acquirements by enabling every man in the legal profession to be present in the courts, listening to the discussions that are going on, and to participate in them; and we have had — and perhaps my friends will think I am too much of an optimist —but I will say this unhesitatingly, that we have in the State of New York a profession of law of which any man may be proud to be a member, and we have been as much benefited by giving every man an opportunity to participate in the

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discussions in the courts as a doctor or surgeon is benefited by having an opportunity to go into the hospitals, and to walk the hospitals where the diseases he has to cure are brought constantly before his eyes. It is said by my friend from Essex [Mr. Hale], that the committee have provided against the evils which I have suggested. I think not. Suppose it were the case that there was to be one general term for the third and fourth judicial districts—that the district now running from Sullivan to St. Lawrence, inclusive, are to be united in the holding of general terms. One or two courses shall be adopted. As it is at present in this district, at every successive term, every cause that is ready for argument is argued, and I presume it is substantially so in the fourth district. At the first term, there being four terms held in each year, every cause that is ready for argument can be argued, and that, too, by spending little more than a week's time. If two districts are united, either the lawyers have got to travel from one or the other of these districts into the second district, and there wait two weeks, or else there shall be a general term for one district, and subsequently a general term for the other district. They must either defer the time for the argument of the cause or increase the size of the calendar. To my appreciation it can result in nothing in the world but the injury of the profession at large. It can result in nothing but a burden to the members of the bar. Here is a lawyer in the county of Ulster that has tried his cause at the circuit. He is a man of reasonable capability, but he has but one cause that goes to the general term. That cause is carried to the general term. If he goes himself to the general term and goes to Plattsburgh, as is now done for the accommodation of the fourth district, his expenses must be paid from Ulster or from Sullivan county, if it be there, to Plattsburgh, and he must be supported by his client at Plattsburgh for two weeks to wait for the argument of his cause that would be argued and disposed of at the city of Albany, if the state of things that now exists had been continued, in three days. And what is the result? Either that the client is loaded with an expense entirely unnecessary, or that the lawyer who tried the cause is compelled to do as was done previous to 1846 in the case of a general term—to hand over his brief to some one of the favored few of the profession who alone follow the general term from district to district, and from locality to locality, and thus there will be a monopoly, and the few will transact all the business. I am not in favor of either result. I am not in favor of putting an intolerable burden upon the suitor himself, nor am I in favor of building up a section of the profession who alone shall have the prerogative of arguing causes at the general term to the exclusion and disadvantage of the rest of the profession, and thus, indirectly, of the rest of the State; because the suitor is as much benefited as any body else in having the opportunity to go before an experienced man in the presentation of his case in the privacy of office consultation whether he lives in one section of the State or another. If we elevate the general charater of the profession we benefit the State, and for that reason I am in favor of leaving the system as it is.

Mr. FOLGER—If I have correctly followed the remarks just concluded, the only idea presented by the gentleman from Rensselaer [Mr. M. I. Townsend] in opposition to the system of the committee, is the inconvenience to the attorneys. I do not hear him object to the principle of the system; I do not hear him contrast the principle of the old system and the principle of the system proposed by the committee and draw any conclusions in favor of the old system and detrimental to the one presented by the committee. But the sole idea he has presented, from beginning to end, is that the attorney must take a longer travel and be at greater inconvenience in arguing his case than under the present system, and therefore the attorney and the client must, in a proportionate degree, suffer. Now, it appears to me that that may be done away with in a very few words. In the first place this Constitution does not end the formation of the judical system. We cannot put all the details within the covers of our report, or of the Constitution which we shall frame. Something has to be left to the Legislature. We make the skeleton; it is clothed upon with muscles and nerves, by and by, by the Legislature which succeeds us. Now, how is this difficulty or inconvenience which the gentleman sees to be obviated? We provide here for a department which shall include two districts; we provide for a general term in that department, we provide for a general term which shall not sit at any one fixed place, but we leave it to the Legislature to say that it may and that it shall rotate from place to place. Take for instance, the seventh and eighth districts, we say that there shall be general terms in the department composed of the seventh and eighth districts, and that the Legislature shall prescribe their times and places of sitting. Still, I suppose the Legislature will prescribe very nearly in substance what the courts have prescribed. The general term of the seventh judicial district sits uniformly at Rochester, because there is the State library. The general term of the eighth district sits uniformly at Buffalo for the same reason. How easy it will be for the Legislature to say that the general term of the fourth department shall sit alternately at Rochester and Buffalo, and that when it sits at Rochester causes shall have preference which arise in the seventh district, and when it sits at Buffalo causes shall have preference which arise in the eighth district. Then where is the difficulty which the gentleman has evoked? It has gone. Gentlemen residing in the eighth district will then have just the same facilities to reach the place of argument of their causes as they have under the present system; so that the difficulty seems to be obviated when our views are by the Legislature carried forward to the perfection of the system, the rudiments only of which we can trace here. Now, there are advantages in the system which we propose, which I think every lawyer will appreciate, from the disadvantages he has seen in the present system. A lawyer goes before a court of the district in which his opponent resides, and he meets there

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...om the bench judges with whom his opponent ... the case is more or less intimate, and there is sometimes an embarrassment. I am speaking now of what is inevitable in human nature, something to which we cannot shut our eyes—there is embarrassment and a sense of favor and partiality known in such a case; and whether partiality exists or not this feeling exists. I think that it is oftener suspected than found, but let us if we can avoid the chance of suspicion. Now, we propose to take from a distance, from one district, two judges to sit at general term with the two judges of another district, men so far removed from these local influences that they will be entirely free from any feeling of partiality, and not only free from any such feeling, but free also from any suspicion of it—for it seems to me that the suspicion of favor is greater than the reality—by this means we avoid the probability of even such a suspicion. There is that gain by the plan which we present, and I conceive it to be a great thing to be gained; and if there is no other better plan than that which the gentleman has urged, it seems to me that this single merit of the plan proposed by the Judiciary Committee, if it has no other, ought to secure its adoption.

Mr. M. I. TOWNSEND—It is my distrust of the view last expressed by the gentleman from Ontario [Mr. Folger] as much as any other consideration which causes my dislike of the whole system of bringing in strangers to try causes in the counties. My friend from Chatauqua [Mr. Barker], who was recently elected to the bench, might under this system, be sent to Rensselaer to try causes. Now, in that case, from my age and position, I should have the advantage of the personal acquaintance of the judge, whilst the members of the bar generally in that district would be laboring under a disadvantage. It is creating a state of things such that the leading members of the profession, a favored few, are to have all the advantages, and the many are to have the disadvantages. Probably I may be considered as speaking disinterestedly on this subject, for my age is such that I should be as likely to be known to a judge that was sent to Rensselaer from some distant county as any one else would be, but I cannot conceive, according to my opinion of what is right between man and man, why the fact that I have age and experience should give me the advantage of finding a judge with whom I was personally acquainted to try my cause, but who was entirely unknown to the great body of the profession who were called upon to transact business before him. I believe that there is an immense benefit resulting, right in the direction of the benefits that I spoke of before, having our judges known to the profession, and the profession known to the judges, and I feel that it is not for the benefit of the profession at large that strangers should be sent into the counties, but directly for the advantage of older and more leading members of the profession.

Mr. SPENCER—I have waited during the entire discussion upon this amendment to hear from some member of the Judiciary Committee, or from some other person who defends the organization of the supreme court which has been proposed by the committee, and I have waited in vain, until the gentleman from Ontario [Mr. Folger] has now seen fit to favor us with what he supposes to be the advantages of that system over the present one. Now, it seems to me that, so far as that exposition is concerned, it has entirely failed to show that the proposed system has any advantages whatever over that which has been in existence for the last twenty years. There is one view which perhaps the committee should consider before coming to a conclusion upon this question, and that regards the ability of the court, under an organization such as is proposed by my amendment, to perform the business which shall be brought before it. In the first place, it is to be increased by the addition of four justices, whose duties have hitherto been performed in the court of appeals; and so far there is an addition to the working force of that court. In addition to this, it must be remembered that the Constitution of 1846, and the consequent legislation, wrought so great and so radical changes in the constitution and the practice of the courts, that from twenty to twenty-five per cent of the subsequent litigation in them was owing to that cause, and that from twenty to twenty-five per cent of the time of the courts was occupied in settling the questions arising out of that radical change and out of the consequent litigation. In the lapse of these twenty years the practice under the present system has been to a great degree settled, and the courts are now relieved of much of the burden of litigation which has been thrown upon them in consequence of these great changes. In addition to this, it is proposed by this report—and I think there will be no dissent on the part of the Convention—that original jurisdiction should be conferred on the county courts, so that in this way again the supreme court will be relieved of the large amount of business which has hitherto been thrown upon it.

Mr. FOLGER — The plan of the Judiciary Committee leaves it open for the Legislature to give just as extended jurisdiction to the county courts as it sees fit.

Mr. SPENCER—That is what I say, that it is proposed to confer original jurisdiction upon the county courts, and in this way the supreme court will be relieved of a large amount of business which has been thrown upon it. Now, with all these means, by which the working force of the supreme court would be increased, it seems to me there can be no difficulty under the present system in so arranging the distribution of its business that the judges may be detailed for the holding of the terms of the supreme court, so as to carry out the principles which the report of the Judiciary Committee have sought to ingraft upon the Constitution. But there is one objection to the plan proposed by the Judiciary Committee which has not been adverted to in the comparison of the present plan and the plan of the committee, an objection which it seems to me cannot be overcome. It is this—the plan of the Judiciary Committee proposes to elect the judges of the supreme court by departments, of which there are to be four in the State; but still it proposes to preserve the distinction of districts as they now exist. The consequence of this will be

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that the justices of one district may be elected by the electors of another, and that in consequence of this, the seventh judicial district may have imposed upon it four judges of the supreme court who are not the choice of that district, and in like manner the electors of the eighth or of any other district, may have imposed upon them four judges of the supreme court who are not the judges of their choice. It seems to me far more just that the judges of the supreme court should be elected by districts as they are now, so that judges may be elected who will be acceptable to each district.

Mr. COOKE—I also have listened with a good deal of attention to hear from some members of the Judiciary Committee in regard to the pending proposition. The substitute proposed by the gentleman from Steuben [Mr. Spencer], was offered the other evening. It has been discussed now, with a single exception, by gentlemen in favor of it. Until this morning no one has undertaken the defense of the plan submitted by the Judiciary Committee. On several occasions the committee have been about to come to a vote upon the proposition of the gentleman from Steuben, with every indication, so far as I could learn, that it would be adopted. I have been surprised at the passiveness of members of the Judiciary Committee, in view of this fact. The other day when I had occasion to offer some observation in regard to the proper organization of the court of appeals, with a view of increasing its capacity, and thus for the future avoiding the evil of delay in the administration of justice, the two gentlemen from Onondaga [Messrs. Comstock and Andrews], among other things, proposed to remedy this evil, by establishing a reform in the organization of the supreme court. I have been waiting to hear those gentlemen suggest something having that object in view, and have been expecting to hear them take a position against this substitute. I had supposed that when my friend Mr. Andrews, who proposed to relieve the court of appeals by a substantial reform in the organization of the supreme court, came into the Convention, he would take hold of the matter, and show some way in which this reform could be effected; but up to this time that gentleman has made no sign; notwithstanding the fact that the proposition of the gentleman from Steuben [Mr. Spencer], which from the first has appeared formidable and likely to be adopted by this Convention, is simply to retain the present organization of the supreme court, so far as I can see, without any attempt at or pretense of a reform. Now, if this reform cannot be effected, then we are all at sea again in regard to the question of the court of appeals And, although I have no plan of my own for the organization of the supreme court about which I am particularly tenacious, yet I feel that something ought to be done to correct the paramount evil under the present system, the overburdening of the court of appeals with business, which is constantly increasing. I wish this committee to understand one fact, that there has been a steady increase of business in the court of appeals ever since the organization of the present judicial system—an increase by which the accumulated business of that court is doubled every ten years. The first year after the adoption of the present Constitution, 1847, there were one hundred and nineteen causes taken into the court. Five years afterward, in 1852, there were two hundred and sixty causes. Five years afterward, in 1857, there were three hundred and sixty-two causes, and in the year 1862, five years after that, there were four hundred and ninety-seven causes. Now this increase of the business of the court of appeals, the accumulation, the delay in the disposition of causes, is the evil that we ought to remedy; and I ask the Judiciary Committee whether in view of this difficulty, it is wise or proper to allow the present system to be continued. If they think it is, then so be it. But our constituents have a right to expect that some remedy will be furnished for the evils of which I have spoken.

Mr. GOODRICH—Not having agreed with all the details of the plan for the organization of the supreme court, which has been presented by a large majority of the Judiciary committee, I have not felt called upon until now to take any part in the discussion, or to present that plan to which I was brought in the deliberations of the committee by my own reflections; but at this juncture in the debate, I rise for the purpose of moving as a substitute for the pending substitute for section 6 of the majority report, sections 6, 7, 8, 9, 10 and 11 of the minority report. In doing so, I beg the patience of the committee, while I briefly explain the considerations which induce the presentation of that plan on the part of the minority. That the reasons upon which my plan may be the better appreciated, I must call attention to the sections of the minority report. Section 6 of the minority plan provides that the State shall be divided into three departments, and that there shall be elected, in each of the three departments, by the electors of the department, twelve justices of the supreme court, and that they are to reside equally in each of the judicial districts of the department. The plan retains the present judicial districts, as they are now organized; the first department consisting of districts Nos. 1 and 2; the second of Nos. 3, 4 and 5; and the third department of Nos. 6, 7 and 8; and in providing for this organization in respect to the location and distribution of the residence of the judges, the purpose of the plan is to retain all the local conveniences of the present system, which are certainly great. Under this plan the judges in the several departments will reside, as now, in the judicial districts composing the department in equal numbers. The seventh section provides merely that these departments may be reorganized by the Legislature. The eighth section provides that the justices in each department shall, from time to time, and as often as necessary, designate one of their number as presiding justice. The presiding justices shall not act as trial judges, nor hold special terms nor grant orders reviewable in the supreme court; but they shall severally preside at the general terms in their respective departments. They shall likewise have the power of removal or appointment of the reporter of the supreme court. Section 9, which is the material section of the plan, provides that to each de-

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meet, for the purpose of holding general ... of the supreme court therein, there shall ...signed from time to time five of the said ...ex one of whom shall be the presiding jus... of the department, and but two from each ...e other departments, any four of whom ...constitute a quorum. The assignment shall ...made that of the five justices so assigned ...h department two of the four from the ...departments shall retire at the end of every ...d year and others be assigned to fill their ...s and in respect to making such trials re... shall be had to equalizing the terms of ser... of the several justices as far as may be ...consistent for the due and proper adminis...tion of justice in the supreme court. Section ...provides that any one of the justices not ...ned to service in the general terms may hold ...rcuit courts, the courts of oyer and termi... in the special terms. Section 11 provides ...no judge of either the supreme court or the ...of appeals shall sit in review of his own ...ions. Mr. Chairman, it is undoubtedly true, ...in the organization of the supreme court ...reference is to be had to the court of ...als. The great defect which has hitherto ...and still is felt in that court, is its inability ...perform the large number of appeals that ...to it. The fact stares us in the face, that ...court has been and is likely still to be en...inadequate to the performance of the busi... which must come before it. As has already ...observed, the cases in that court have been ...ually increasing. There was a diminution ...ng the latter years of the war, but since the ...s closed, a marked increase is again to be ...ved, and in all probability that increase is to ...steadily year by year during the future ...y of the State. It is to be observed further ...we have now made one improvement in ...court which will, if the subordinate courts ...in as they now are, be likely to draw ...ll larger increase of business from the ...ary subordinate courts. Besides, it is to ...remembered that we have now established ...court of claims that is to dispose of ...the cases arising between the citizens and ...State, and from which an appeal is given ...ly to the court of appeals. Now, sir, with ...new supply and the appeals that must be ...ted to come from the ordinary courts, ...ugh we may provide for disposing of the ...accumulation of business in the court of ...how long will it be before a new accu...tion as large and oppressive as the present ...e again thrown upon that court, and the ...ature, or the State through some new Con...on, be called upon to add a remedy for such ...accumulation of business? How is all this ...remedied? For no doubt it is the great ...of the judicial system of the State. If ...are to rely upon temporary commissions ...the court of appeals, and if that is to be ...medy to be relied on as often as it becomes ...ssary, you strike a blow directly at the con...ce which is to be felt in that court; for no ...when he appeals to the court of appeals, can ...whether his case will be decided by the court ...whether it will be shuffled off into a tempo-rary commission to be decided and disposed of there. And in a court of last resort in the State, in so great a commercial State as this, such a defect, any want of reliance in the court, will be an evil of the greatest magnitude—one that will bring into disparagement the whole judicial system of the State. Against such a defect some full, adequate, clear remedy should, in my judgment, be provided. It seems to me that this Convention owes nothing so much to the people of this State as to provide that remedy against this defect in the re-organization of the courts of the State. That remedy has been demanded from all quarters—from the legal profession, from suitors and from business at large. One proposes that the business of that court shall be divided into equity jurisdiction, and common law jurisdiction, and that two courts of appeals shall be established, one to decide appeals in equity cases, and the other appeals in cases at law. Well, sir, if that be adopted, then it involves the necessity of doing away with the legislation of the last twenty years, including the Code, for which, I think few are prepared. Another suggestion has been made and defended here, of a dual court, a court, or one that shall consist of two working quorums; and after a full discussion it has been rejected by the committee. How, then, are we to find a remedy? How are we to provide for this oversupply of business which is certain to be thrown upon the court of appeals? Does any member of this body feel that this court, with its seven judges, and acting as a unit, will be capable of doing the business that it will have to do? I scarcely think that such can be the opinion of a single member of this body. Now, sir, my own reflections have brought me to the conclusion that the true remedy against this oversupply of business in the court of appeals, is to be sought for and obtained by improving the character of the supreme court, so as to enable it to command more largely than it has hitherto done, the confidence of suitors. I am not here to say that the judges of the supreme court have not been uniformly men of capacity, and men of the highest integrity. That bench does not now lack efficiency, it does not now fail to command the confidence of the people and of the suitors, for any such reason as that. Indeed, sir, I fully believe the capacity and integrity of the judges who have administered justice in the supreme court, cannot justly be questioned. Nor has that court failed to command the confidence of suitors, because it does not possess, largely, local conveniences. The conveniences referred to by the gentleman from Rensselaer [Mr. M. I. Townsend] undoubtedly do exist, and the existing plan of organization of the supreme court has doubtless been the parent of substantial benefits to the people of the State. It has diffused legal intelligence, it has strengthened the bar of the State, it has brought justice to the door of every citizen; and in these respects I agree entirely with the gentleman who has so eloquently commended the present plan of the supreme court. We are not therefore to seek any improvement by a change in these respects of the present system of that court; but there are undoubtedly defects in its organization, and that owing to them the court has failed to com-

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mand the confidence of the bar, or of the people of the State, as largely as the character of its judges entitled it to do. One of these defects, in my opinion, is to be found in the fact that the court, while it consists of eight different branches, and each having jurisdiction co-extensive with the State, has its judges elected by local constituencies confined to the several districts. The judges of the first district, for instance, are elected by a constituency residing there, and in no other district. Now, I submit to gentlemen whether the application of the elective system to the election of judges of the supreme court under this organization has not tended to bring the court into disparagement. For when a suitor from without a district comes into it to argue his case before the general term, the judges of which are elected by his adversary, and not by himself, he fancies, however correctly or incorrectly, that that circumstance has had more or less to do with the decision of the court, if it proves to be against him. He fancies so — he believes so, although in fact that circumstance may not have had the slightest weight in producing the decision. Hence he impugns the motives of the judges, and in feeling that his case has been unfairly decided, he naturally appeals to the court of appeals for redress. But the great defect in the present organization of the supreme court undoubtedly is that its judges in all the districts are constantly reviewing the decisions which they themselves have pronounced. Now, this feature in the system, especially demands correction. In strictly analogous cases in the proceedings of the court itself, the practice is not allowed. The juryman, for instance, if he has already formed an opinion of the case he is called upon to try, is for that reason excluded as incompetent, by the very judge who is constantly allowed to sit in review of his own decisions. So, too, of one proposed as a referee, however capable and honest, still the judges refuse to appoint him (and properly refuse) if he already has an opinion of the merits of the case. The truth is, the influence of opinions or views already formed is too certain on the minds of even the honest and candid, to make it possible that they should rejudge with strict impartiality. And yet, organized as the supreme court now is, the appellant is always compelled to go to the general term with this influence against him on the part of at least one, and sometimes of more, members of the court. This is so in fact; but the case is even worse as the suitor often looks at it. For, where all the cases reviewed have been already decided by some of the members of the court, he conceives that they sympathize with and assist each other in upholding their previous decisions wherever it can possibly be done; and, in case he is beaten, he is ready to conclude that he has fallen a victim to a system of log-rolling on the bench, which, while it disparages the court, drives him to a further offer for relief. These, I say, are the views of the suitor, and often, it may be, of his counsel and friends. I am by no means asserting their correctness. On the contrary, I believe they are more often incorrect in fact. But that does not change the argument or lessen our obligations to supply, if possible, some different organization under which the court and suitors may meet on better terms — some organization which will relieve the court from any such disparaging reflections on the part of those whose cases it decides on appeal. And now, sir, I maintain that it is from these defects in the organization of the supreme court that so many causes go to the court of appeals. If, therefore, they can be removed, and a court of review in the supreme court be organized upon sounder principles and with a sufficient number of judges to command full confidence, I submit, whether appeals to our court of last resort would not be very much lessened. For myself, I have no doubt they would be lessened full one-half. The design of the plan I submit is to provide, if possible, such a court.

Mr. SPENCER—I will ask the gentleman if he ever knew of a party that was satisfied with a decision against him in which the question of law was in any way doubtful?

Mr. GOODRICH—It is not likely that an unsuccessful party would be satisfied; but this want of satisfaction may be greatly increased by the character of the court by which that result has been reached. Now, Mr. Chairman, I wish to call attention to the report of the majority and to section 8, by which the majority of the committee propose that provision shall be made by law for designating from time to time the justices who shall hold general term, and also for designating the chief justices in the four departments. By their plan four of these justices are to hold the general term and three to form a quorum. Now, under these provisions, or under the provisions of the pending substitute, if you adopt the further provision proposed that no judge shall sit in review of his own decisions, it seems to me that the general terms that will be provided for, will be in constant confusion. At every general term possible to be organized under the plan of the majority of the committee, it must continually happen, that when a case is moved, one of the four judges has given an opinion in it below, which will prevent him from sitting for its review, and therefore he steps aside and leaves the case to be heard before the three judges. In the next case perhaps another judge is in the same situation as to that, and he is required to step aside when that is moved. But in all cases the disqualified judge still remains associated with the judges that do decide. Now, does it not strike every one that that will be unsatisfactory to the suitor? Will he not think, and perhaps justly think, that such judge, although he does not really participate in the decision, will, after all, from being with the judges that make it, have a very decided influence upon the determination they come to? The potent cause of prejudice to suitors is not, therefore, removed. It seems to me that the only effectual remedy is to entirely remove from the court and from all association with the judges holding the general terms the judge who has already pronounced his opinion in the case. I have, therefore presented a plan by which this will certainly be done. It proposes that the State shall be divided into three instead of four departments. I do this because one of the disparaging elements in the

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[illegible]sion of the supreme court arises from the [illegible] number of its branches, each constituting [illegible] independent tribunal, making, in fact, eight in [illegible]. Now, each of these eight courts are con[illegible]ly in conflict in their decisions with the [illegible] and these conflicts, however natural and [illegible]rable, yet, from occurring in the same court, [illegible]ad to the opinion that the court itself, in [illegible] branches, must necessarily be defective. [illegible] conflicts have already been discussed and [illegible]ded at great length on this floor; and all [illegible]es that to get rid of them, or to reduce them [illegible]uch as may be practical, will greatly tend to [illegible]ase the character of the court. The plan of [illegible]ee departments, therefore, must be preferable [illegible]ne and certainly far preferable to eight. In [illegible]ch of these three departments I propose there [illegible]ld be a presiding justice, to be designated by [illegible]e other justices of the departments, and to [illegible]reside at all the general terms within his department. That he may never be subject to the [illegible]harge of reviewing any decision of his own, I [illegible]further provide that the presiding justices shall [illegible]act at all as trial judges or hold circuits [illegible]or special terms, or grant reviewable orders; [illegible]so that they will always be free from the [illegible]disqualification arising from that cause. I [illegible]provide for the presiding justice for another [illegible]reason; it might without that provision be considered that the general terms would be unstable [illegible]and too transitory. Of the other four justices [illegible]who with the presiding justice, are to hold the [illegible]general terms in each department, two are to be [illegible]taken from each of the other departments; and [illegible]the five altogether, will, I think, constitute a [illegible]court that will be entirely free from all objection, [illegible]as a court of review. And, Mr. Chairman, let me [illegible]suggest that such a general term will be, not a [illegible]local court, as is the present supreme court; each [illegible]general term will be practically and to all intents [illegible]and purposes a State court, with judges from each [illegible]department, from all parts of the State, composing [illegible]. Suitors coming from one part of the State [illegible]before it in any section, however remote, would [illegible]see upon the bench two judges from their own [illegible]part of the State; with others, at the same time, [illegible]from other parts; while no one section would be [illegible]represented more than another; and thus each [illegible]general term would, under this organization, rise [illegible]from a local to a State court, in which all would [illegible]feel to confide for a just and impartial administration of the law. It seems to me, sir, that this [illegible]simple consideration would both add to the confidence of suitors, and, at the same time, give [illegible]weight and authority to the decisions of the general [illegible]terms. The city of New York, and the other [illegible]sections of the State would all be benefited by the [illegible]operation. So, too, would all sections. Reference [illegible]has been made on this floor, with what propriety [illegible]I will not undertake to determine, to some special [illegible]considerations affecting, unfavorably, the administration of justice in the supreme court in the large [illegible]cities, and more especially in New York. I submit whether its general terms thus organized and [illegible]held by judges from all parts of the State, would [illegible]not go far to supply a remedy for whatever evils [illegible]of this kind may prevail. Other advantages would [illegible]spring from them. Through the mingling of [illegible]judges from every part of the State, and the discussions and interchange of views which would follow, the tendency would be to lessen the conflicts in judicial decisions which otherwise might be expected to prevail, even under the three department system. In all respects, I believe the effects from such a commingling together of judges would be highly beneficial. And now, sir, why should not this plan be adopted? Twenty years ago the want of the facilities of travel might have been urged as an objection. Can that be urged now? In each of the three departments, there would be held, in all, in every year, twelve general terms, provided four should be held in each of the judicial districts as now. I submit that two in a district would answer the convenience of parties and the profession, as well as four; and that would require but six general terms in a department in a year. These the judges assigned to hold them, would be able with all ease to attend, and not be from home scarcely more than they now are—certainly not more than the judges of the court of appeals are required to be; for the terms would not occupy more than ten or twelve weeks of time in all, leaving the judges ample time at home for the decision of cases and the preparation of opinions. From the best information I have been able to obtain, the number of cases to be annually decided in a department would not be far from five hundred. Many of these would be readily decided, and others would require more time for their decision; but I have no doubt that three courts of five judges would find no difficulty in disposing of all the business, and keeping in all the departments the calendars clear. Will it be urged that to provide in the organic law for the composition and holding of these general terms, is going too much into detail — that all this should be left to the Legislature? I think otherwise. The truth is the Legislature will not be likely to do it. Besides, as the people of the State expect from this body a plan of courts which will remedy existing defects, in responding to the demand, if we fail so to change the organic law as to put it in the power of the Legislature to supply the remedy, we fall short of doing what is expected of this body, composed so largely of the members of that calling or profession that, of all others, should be best able to perfect the proper reorganization of the courts. How, sir, will the people know whether our work will be worthy of their acceptance or not, unless it bears upon its face precisely the scheme of courts which is proposed. The existing system is by no means intolerable. Many are of the opinion that, with all its defects, it is still the best that can be devised. At least, we can hardly expect that the people will be willing to adopt something else in place of it, without knowing what it is to be, without seeing precisely what it is, so as to be able to determine whether the change is desirable. Without further explanation, I submit the plan I have prepared to the consideration of the committee.

Mr. DALY—I am impressed with the remarks of the gentleman who has just taken his seat. They are entitled to great consideration, as is every thing which proceeds from that gentleman. They are the result of mature consideration. I

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was impressed with them in the committee, and inclined to think favorably of his plan But, sir, the division into four departments was adopted by the committee from the fact that we were satisfied, by inquiries made by members of the committee in different parts of the State, during the long period that we were in session, that that plan was more generally acceptable than any other; that a territorial division into four departments would be more efficient for the dispatch of business, than the plan which the gentleman proposes. I, therefore, in common with a number of the other members of the committee voted for it. It was a plan between the proposition for three departments and the existing system of eight districts. We found the general sentiment throughout the State to be that the division of the supreme court into eight distinct or territorial parts, each independent of the other, was objectionable, as giving rise to too many conflicting decisions, and we thought that that could at least be avoided, in part, by reducing the number of districts or departments. After a very full consideration of the subject, and after a full expression of the views of the gentleman who has just sat down, views similar to those which he has stated here, the committee, by a large majority, decided upon four departments. We felt that a change was necessary, and that, in making it, the better course was to adapt it as far as possible to the wishes and views of those who are to be the most affected by it. The committee had among its members gentlemen belonging in different parts of the State, who had the opportunity of hearing the views of those who are most interested—lawyers in practice in different parts of the State—and the result of those inquiries, as expressed collectively in the committee, was, upon the whole, that a division into four departments was, in regard to their geographical distribution, in respect to their working and general efficiency, would be preferable to a division into three departments. For that reason, sir, in common with other gentlemen who, like myself, were at first impressed by the remarks of the gentleman from Tompkins [Mr. Goodrich], we concluded that a division of the State into four departments would be unobjectionable and more satisfactory than any that could be adopted.

Mr. PRINDLE—I have great respect for the Judiciary Committee and for the report which they have made to this Convention, and also for the gentlemen who made the minority report which is now under consideration. But I am not fully satisfied with either of those reports. Nor am I satisfied with the substitute which has been proposed by the gentleman from Steuben [Mr. Spencer]. None of these propositions are sufficiently radical to meet my views of the case. I think there should be entire separation between the functions of the judge at circuit and the judge in banc. And in discussing very briefly these reports and propositions, I desire to read a proposition which I propose to submit when the opportunity shall occur.

"There shall be a supreme court having general jurisdiction in law and equity, subject to such appellate jurisdiction of the court of appeals as may be prescribed by law. The State shall be divided into three judicial departments t composed of the judicial districts now exist the first and second districts to compose the department; the third, fourth and fifth the se department, and the sixth, seventh and e the third department. There shall be in department four justices of the supreme who shall have appellate jurisdiction only shall hold the general terms, and eight ju of said court, any one of whom may hold s terms of said court, and circuit courts, and side in the courts of oyer and terminer in county."

It will be observed that the division of the into departments is the same as that propos the gentleman from Tompkins [Mr. Goodri his minority report—and I think it is as goo convenient a division as can be made. plan which I would propose, I would lea question of the term of office of the judges, to whether the present judges shall conti hold their offices or not, for further amen I hope this committee will vote upon the q alone, as to whether we are to return to circuit system, which I believe is the true us to adopt. I do not believe, as the gen from New York [Mr. Daly] suggests, tha necessary that we should make any comp in this matter. I do not believe that it is sary that we should have any such comp system as the report of the majority or of nority of this committee proposes. I thin is a plain and natural division of the labors judiciary in this State; and that is to have judges to perform the duties of the cir hold special terms, and to make orders, wh reviewable in the general term and to pr the courts of oyer and terminer. Let judges in banc, who are to attend to that of the business exclusively, and do nothi I have been surprised to hear so many ge in this Convention favor the plan of our judiciary. It seems to me that the plan respect at least, is most fatally defect embraces one defect at least, which called upon by the people of this State t nate from our Constitution, and that is judges who have presided at trials in the below to review their own decisions, or t the same court where those decisions be reviewed. I am surprised that we sh fuse a juror the privilege of sitting i in which he has expressed an opinion, an low a judge to participate in the decision in which he not only has expressed an opi has decided convictions and opinions, v nineteen cases out of twenty, it is utterly sible to remove. I do not think the repo majority of this committee helps this m all. I think this system is just as defecti allow a judge to sit in the same court u same bench where his decision shall be r as though he had a voice in the decisio proposed remedy does not go far enough, not effect a cure of this evil. For Judges A, B and C are to hold a gene Now, when the decision of Judge A to be reviewed, the two other judges will ask him, "What reasons had you for gi

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you have made in this case?" Of course I would not be backward in giving those reasons. It is human nature that he should be glad that his opinion should be sustained, especially when his convictions are that his decision was right. And the party who succeeded in the court below would never be without a very influential and able advocate in the court of general term, while the other party at the general decision would have no advocate at all. It seems to me that the remedy proposed by the committee would, if possible, make the matter worse; and the judges would be, if possible, more disposed to sustain each others decisions than they are at the present time. I do not wish to make any reflections upon the judiciary of this State, for I have a most profound respect for our judiciary, both as regards their integrity and their ability. And especially I may say this in regard to the judges in my own district with whom I am best acquainted. The evil of which I am complaining is the system, and not in the judges. Now, in this respect I am not quite satisfied with the report of the minority of the committee. There has been an endeavor made to eliminate this idea from the system by that report; but I do not think the effort has been entirely successful. The minority report proposes that there shall be a chief justice in each department, who shall preside in each department at general term, who shall have no circuit business, no special term business, and who shall grant no orders reviewable in the general term. It provides that two judges from each of the other departments shall be associated with him in that department, for the time being, to hold the general term. There is no provision in this report which prevents these two judges, taken from one of the other departments, from holding special terms and circuits in the department in which they are to hold the general term. And it may be quite possible that a judge will in the first place hold circuits in a department, and immediately afterward hold the general term there, and in that case he would sit upon the bench where his own decisions were reviewed. There are thirty-six judges in the State, according to the plan, constantly reviewing their own decisions, and I say that men would be superhuman with interest all the same, if the tendency would not be as it is now to sustain their own decisions at circuits and at special terms. Although there is this large number of thirty-six, their interests are all alike, and I say the natural tendency would be that they would sustain their own decisions. Now, I am in favor of so constituting the supreme court of this State that it shall be utterly impossible that judges can either review their own decisions or exert any sort of influence in the court that is to review them. I am in favor of effecting a radical cure for this disease in the system. The plan which I propose would be to have twelve judges in each department, the same as the minority report of the committee proposes. I would have four of those judges hold general terms and do no other business. I would have the other eight hold circuits and special terms, and preside at courts of oyer and terminer, granting orders, etc. What objection, I ask this committee, is there to any such plan as that which remedies all these defects of which we complain, of which the bar in this State complain, and of which the people in this State who have cases in courts of justice, complain If the division of labor is not correct, that can be amended. If we ought to have five judges to hold general terms, and seven judges to do the rest of the business, that can be done. I have adopted the division of four and eight because I thought that would come nearest to what is right. I ask, what objection is there to this system, and what objection do we hear raised? Why, the substance of the objection is, and I believe it is the only objection that has been made, that judges in banc become too technical unless they participate in the business of the trial of causes at circuits; that they are not fully qualified to sit upon the bench at general term, and decide cases, unless they can at the same time mingle their experience with the business of the circuits. This objection was alluded to, I recollect, by the gentleman from Essex [Mr. Hale], and has been alluded to by one or two others on this floor, but none of them, I believe, have seen any particular force in the objection. Now, that is the objection to this system, and it is altogether too fine for me to comprehend. I cannot understand it. I cannot see why a judge who has practiced for years and years at the bar, and tried causes at circuit, should be compelled to go down into the circuit and hold terms in order to qualify him to decide at the general term. I have read something of the debates of the Convention of 1846, and I have listened to gentlemen upon this floor, but I have been unable to see any particular point to the objection that is made to returning substantially to the old circuit system. What is there about the experience of the judge holding courts at general term, that should obliterate from his mind all that he has ever learned at circuit? What is there in the business of holding general terms, I say, that renders the past life of a man a total blank, so that he cannot profit by his experience? I believe we shall have far better judges at general term, if they do not hold circuits and special terms. A judge necessarily consumes a large amount of his time, when he goes to circuit and special term. Much of the business in which he is engaged in holding these terms is drudgery; much of it is a business that has no tendency whatever to improve his mind. It gives him no information; he learns nothing more than what he knew before. If we make a supreme court such that the judge shall do no business except in the general term, and confine judges exclusively to that and to study, I say we shall have a far better court, a far higher court, a far more learned court, than we shall if we compel these judges two-thirds of their time to travel about the country, holding circuits and special terms. Now, I have heard, upon this floor, and I have learned elsewhere, that in former times, under the old circuit system, we had good judges. I believe that no fault could be found, and no objections could be raised to such judges as Judge Kent. His mind was not dwarfed; he was not rendered incapable of presiding and hearing cases

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at general term because he was not compelled at the same time to participate in the business of the circuits. From the suggestions of gentlemen around me, I may be mistaken in regard to Judge Kent's not holding circuits, but many judges can be pointed to at least, who did not hold circuits or participate in any of that class of business, yet who were eminent, very eminent as judges. If there is any force in the objection I have mentioned, if there is any evil, we have incorporated it bodily into the court of appeals. We have provided the court of appeals, a court, the judges of which are to hold their office for fourteen years, and are not to participate in the business at circuits. Why was not this objection raised to the court of appeals if there was any force in it? Why, I believe for the simply reason that there is no force in the objection. We shall have, and it is believed on the part of this committee and this Convention that we shall have a better court of appeals, because none of the judges in that court are compelled to hold circuits. They can devote their time exclusively to the study of the law, and the investigation of law, and will not have their time consumed by mere routine in holding circuits. Now, sir, with these general terms which I propose, there can be no question that they will be capable of doing the whole business of the three departments. They are continuous courts; they do not sit for a month simply, but during the whole length of the term of office of the judges. That is an argument, I think, in favor of this system. The court cannot be constantly changed. It will be a more intelligent court, a court more familiar with the law, and a court which will abide by the precedents which it itself establishes, unless overturned by the court of appeals. Now, take this rotating court which is proposed by the minority report. Judges from the city of New York come out of that department into the interior and hold circuits; and judges from the country go into the city of New York. There will be a constant change, one set of judges holding circuits in a department one term, and in the next term another set of judges. The result will be a conflict of decision in that department and in the different districts, and we shall never know what the law is. We can get along very well, and have a decision in one district by one general term contrary to the decision of the general term of the district in which we live, because the court in our district will abide by its own precedents. But when you have the court constantly changing and migrating from one district to another, we shall never know what the law is in the district until the court of appeals has passed upon it. This must inevitably be the case. I think it is better that the judges should be permanently located in one department at least. It is not necessary, under this plan, that the judges should hold general terms in one place, as the gentleman from Rensselaer [Mr. M. I. Townsend] suggests. They may hold general terms precisely as they do now, for the convenience of all the members of the bar in the department, changing from one district to another. Now, sir, I have said all I intend to say. These different plans that have been suggested do not meet with my views, and I am satisfied they do not meet the views of the majority of the ba the county in which I reside. I am satisfied they will not meet the views of the majority of people whom I represent, and I have felt it duty to say this much. I trust I shall ha chance before we go out of committee to pre this plan for its consideration.

Mr. RATHBUN—In addition to what has said by the gentleman from Chenango [Mr.] die], I wish to add my views in favor of the which he suggests, but I think with a qual tion which has not been named by him. not certain that he did not name it, beca was not in the Convention at the time he menced his remarks. I do not propose to into any discussion of the several ques arising under this proposed amendment, b confine myself mainly to the single proposit the three general terms of the supreme co the State. I am in favor of the least po number of general terms in the State com to perform all the business required of courts. Our eight general terms have pro failure in settling the law. Their deci although emanating from judges of repu and standing as men of decided integri ability, do not command the confidence people, as is shown by the record, the calen the court of appeals.

Mr. FOLGER — Does the gentleman the number of appeals from the supreme that were reversed at the last court of ap

Mr. RATHBUN—I do not.

Mr. FOLGER—There were but few re and many affirmed.

Mr. RATHBUN—That instead of being gument against the adoption of the pr three general terms, is in my judgment ar ment in favor of it. It shows that this n arrangement of the courts in eight inde general terms in the State, has lost t courts the confidence of the bar and the The statement of the gentleman from Onta Folger] shows a lack of confidence in cisions of the lower courts, although decisions were correct, as shown in th number that were affirmed by the court peals.

[A remark by Mr. M. I. Townsend].

Now, one speech begets another, friend from Rensselaer [Mr. M. I. Towns very much in the habit of making sp because they are begotten by what so else says. In my proposition, which is su ally the same as that of the gentlema Chenango [Mr. Prindle], the old supreu of this State, which was a stable court, ed during good behavior, or until the arrived at the age of sixty years. The nu appeals from that court to the old court correction of errors, was absolutely no comparison with the appeals from thes general terms, to the court of appeals. judgment, just as you diminish the nun general terms, so you will, in effect, dimi number of appeals from those courts, an Because you obtain that stability, that and that independence which gives to to litigation, and to counsel employed

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evidence in the courts which they have not in court as now organized. It would be, in my judgment, the height of folly to adopt that portion of the amendment proposed by the gentleman from Tompkins [Mr. Goodrich], to wit: that in two years you shall overturn the general terms and bring from the districts other judges who have been engaged in the trial of causes, put them in the place of the general term, and send the general term judges back to the circuit to try causes there and at special term. What would be the general effect of this change? Those judges who have been trying cases and hearing arguments at special terms at the end of two years are to take a seat upon the supreme court bench hereby occupied by the other judges who have been reviewing and reversing their decisions. The first class of general term judges will have their judgments reversed and overturned from time to time by the court which they have just left. The decisions of that court would be in conflict with the decisions of the judges below, causes already decided will be re-argued and many of the decisions would be reversed, solely for the reason that the succeeding judges desired to establish the fact that they are as learned and able as the judges whom they have displaced. They will hold that they were right in decisions reversed by the first court, and the judges in the court who reversed their decisions were wrong. In this you have nothing settled. It will be a rotation in courts and decisions, the result will be the reversal and overturning of the decisions of the former court, just so often as you make this rotation in the judges.

Mr. SMITH—Will the gentleman allow me to inquire whether the same objection applies to the report of the majority of the committee?

Mr. RATHBUN—The gentleman must excuse me from answering this question. I have not read the report. I do not know whether the objection will apply or not. My belief is that if you will have a single court called the court of appeals competent to dispose of all the business in the State, you must reduce the number of general terms, and you must make those courts permanent. There must be no rotation. You must give them long terms; you must give them the same independence and the same stability you give to the court of appeals. Then you will find upon those benches just as able men, just as good men, just as honest men, as there will be on the bench in the court of appeals. And you will find that a question coming up from these three general terms, decided in the same way; the court of appeals will concur in the decision of those judges, and the law will be virtually settled before it reaches the court of final resort. Now, what we want, I apprehend, is stability and uniformity in the decisions of the supreme courts. We want none of these changes. I want no democracy upon the the bench. Judicial independence and firmness is necessary. I want ability; I want integrity; I want it to be a court with sufficient standing and duration of term of office to make it feel itself a power, and entitled to respect, and it will be so. This proposition on the part of the gentleman from Tompkins [Mr. Goodrich], in my judgment, does not improve the character of the supreme court as now organized. It will not obstruct appeals at all. It cannot do it, because it is a changeable court; it changes all its members every two years. What can you expect of a court, changing every two years, in regard to the uniformity of decision? It is not possible to find it. It would be a miracle if you should find three judges upon the bench for two years, and then displace them for three circuit judges who would continue the decisions of the first court in a direct line of uniformity. It is the very essence of change, not only in the men, but in the decision of cases arising from the four former members of the same court. What is the trouble with the court of appeals at the present time? It is that every year we put into that court four judges from the supreme court, an equal number with the regular judges of that court. In the first place they cannot go on and do business for a term or two as it ought to be done because they do not understand each other. The justices from the court below are unaccustomed to that court; they must learn something of the routine and manner of doing business. Again, from the time of their entrance into that court until their exit therefrom each of them has probably some case to decide, so as to be able to say that he had been right in some of his decisions overruled in that court long before his advent there. The difficulty is that they carry up motives and intentions which never should enter upon the bench of a court, and which never will if you have a permanent bench. This principle of change in the court is the very essence of mischief and instability in the decisions of that court. It is not only that, but it is worse. It is the cause of the delay of business. The general complaint against that court to-day is that it stands with a large calendar, which, in my belief, had you made it a permanent court with seven judges, or five judges, it never would have had. Now, in regard to the conclusions of my friend from Rensselaer [Mr. M. I. Townsend] for holding on to the present system for the sake of convenience. I can see how that is. He lives in Troy and the general terms are held in Albany. It is convenient for him. I reside in Auburn, upon the eastern boundary of the seventh district; the terms are held in Rochester in the north-western corner of the district, near Lake Ontario and near the western line of the district. I am compelled to travel seventy-eight miles to the general and special terms. That is not very convenient. But the gentlemen forgets that the members of the bar in Sullivan, in Ulster, and the members of the bar in Delaware and Chenango, and all along the line in the sixth district, ranging nearly two hundred miles, are not quite so conveniently situated. And so in regard to the fifth district. In that district the general terms are all held at the city of Syracuse. That is very convenient for the court. It is convenient and pleasant for gentlemen who live at Syracuse, or within a few hours' travel. But when you go out into the northern part of the State, when you come down to Herkimer and go into the country thirty or forty miles, where there are no railroad facilities, it is not quite so

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convenient. These things depend entirely upon circumstances. They do not depend upon the question of the establishment of three districts, but upon the particular locality of the members of the bar who reside in various parts of the State, away from points where the general terms are held. Now a more inconvenient place for Cayuga county could not be selected in the seventh district than the one where our general terms are held. I am within twenty-six miles of the general term in the fifth district, which is held four times a year. Yet I cannot go there. The judges would frown upon the bar in my locality if they were to go there with their business—and we are shut out because we feel and see, and hear from the judges when we go there, that we do not belong there, but in another district. Under the Constitution of 1846 it was understood that we were to have the supreme court ride up before our doors, stop there and hear our cases, and then go on somewhere else in pursuit of business. The court of appeals were to go around with their hats in their hands and ask for the argument of cases to be disposed of on the spot, so that a man could go on with his plowing and the hoeing of his corn without loss of time. What is the result? Just what it has always been. The court remains in existence a permanent body, and its influence finally procured a permanent settlement at Albany. This is as it should be, but it is not what was promised. Justice was to be carried around and peddled out as men peddle out ice at Albany in the summer time. The supreme court judges can travel much more conveniently and with less expense seventy-eight miles than all the members of the bar of a county. They can hold general terms throughout the State, where they are now held; there can result no inconvenience by the proposed change. Let us see how that may be. Suppose, three, or four judges of the supreme court shall be assigned to hold general terms. Each bench has two of the present districts and may hold terms the entire year. How long are the general terms now held in the several districts? Never, I believe, over two weeks, and generally but one. The Legislature has power to say that they shall be held at the same places as at present. Is there any thing wrong in that? Will any one be incommoded by it? Certainly not, because the judges can attend at those place, and hold the general terms of two weeks each —that is, sixteen weeks out of the fifty-two in which the judges will be engaged upon the bench. The balance of the time they will have to decide cases. I wish that court to be so organized and so established that the bar of this State will look upon it and with truth be able to say, that our general term is really just as good, able, and competent as the court of appeals. And the moment you reach that point, as you will reach it, your appeals to the court of appeals will fall off. The court of appeals will be literally a mere court of appeals to harmonize conflicting decisions between the several courts. They can perform that business, and if the judges of that court are not entirely mistaken in regard to their power to transact business, they can take the present calendar and clear it of all the accumulated business, and dispose of that a all other business that will be continually comi before it. That is the opinion of several of t judges in that court. I cannot see why it m not be true. I am satisfied that as soon as th several general terms are organized, and t judges elected for that purpose, that moment o machinery will begin to work and the people w be satisfied with it. Then the desire to app will abate more than three-fourths, and I belie seven-eighths within the first year.

Mr. SMITH—This is a very important questi as all will readily admit. It perhaps involves t only question upon which men must differ opinion. And as the time has almost arrived our adjournment, I move that the committee now rise and report progress.

The question was put upon the motion of Smith, and it was declared carried.

Whereupon the committee rose, and the PRE IDENT resumed the chair in Convention.

Mr. C. C. DWIGHT, from the Committee the Whole, reported that the committee had h under consideration the report of the Commit on the Judiciary, had made some progress there but not having gone through therewith, h directed their chairman to report that fact to Convention and ask leave to sit again.

The question was put on granting leave, an was declared granted.

Mr. HALE—I move that the Convention t a recess until seven o'clock.

The question was put on the motion of Hale, and it was declared carried.

So the Convention took a recess.

EVENING SESSION.

The Convention re-assembled at seven o'cl P. M., and again resolved itself into Committee the Whole on the report of the Committee on Judiciary, Mr. C. C. DWIGHT, of Cayuga, in chair.

The CHAIRMAN announced the pending q tion to be upon the adoption of the amendm offered by Mr. Goodrich.

Mr. SMITH—I enter with a great deal of luctance upon the discussion of this quest from the fact that the discussion has alre been protracted, and also from the fact that I laboring under a severe cold. But this is a m ter of very great importance, and I desire to press, very briefly, my views upon the questi The conclusions of the committee who had t matter in charge are entitled to have, and have, very great weight with this body. I with great diffidence that I shall express opinions at variance with those presented by t committee. But as they met with considera difficulty in reconciling their own views agreeing to a report on this subject, as that report does not, in all respe command the approbation of all the c mittee, I am quite sure they will not c consider it any disrespect to them personally, any disparagement of their labors, if member the Convention should, in some respects, di from the conclusions at which they arrived. is a very difficult matter to devise a good, pract

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...l system. I understand that a gentleman ... morning who addressed the committee upon ... question [Mr. Hand] expressed some con... for the profession as represented in this ... because they were not able to agree upon a ... I think the gentleman could not have ...ained the intrinsic difficulties in arriving at ...factory result, or he would have been more ...table. And I was somewhat surprised that ... as an expression should have come from a ...er of the medical profession who are so ...verbial for harmony in their views! I have ...d that there is great difficulty in arriving at ... conclusions in regard to a proper judicial ... There are, however, some general ... on the subject to which all will readily ... their assent. It will be agreed by all that ... ought to be organized so as to secure ...city and efficiency; and, as under our ...rnment all are equal before the law, our ... should be accessible to all—the high and ... low, the rich and the poor, the strong and ... weak. Our judges should combine in them...ves and in the administration of justice, ability, ...grity, and independence. The law ought to ... plain, uniform and certain, and justice should ...sted out with equal scales. With regard to ... general principles there can be no difference ...pinion. But the question is, how shall we re... these qualities and conditions in a practical ...m? We are not here in the condition of an unor...ized State, compelled to strike out an entire new ...m; and it becomes proper, therefore, it seems ... me, to inquire in the first place, what are the dif...ulties, if any, in our present system. The skill... physician, before he attempts to apply a reme... for a disease, endeavors to ascertain precisely ... nature and character of that disease; or, to ... a technical phrase, he makes his diagnosis, ...n then he is prepared to prescribe his remedies. ... take it as granted that the majority of this body ...ll concede that there are difficulties in our pres...t system which need correction. I have not ... able to find, out of this Convention, a single ...mber of the legal profession, or other individ...al, who thinks that our present system does not ...d some change—some improvement. Indeed, ... satisfied, as has been said on this floor re...rkably, that there was no one consideration that ...duced so many people of the State to vote for ... Convention, as the desire to remedy existing ...ils in our judicial system. And what are ...se evils? They have been repeatedly stated. ... shall not dwell upon them, but briefly allude to ...m in passing. In the first place there is the ...fective organization of the court of appeals. As ... present constituted, the four permanent judges ...ve eight different sets of associates during the ...m of their incumbency, and the results are a ...nt of unity, stability, and uniformity in the ...aracter and action of the court, and a lack of ...nfidence in its decisions. But there are greater ...fects in our supreme court system. In the first ...ace, judges sit in review of their own decisions. ... do not believe there can be found an honest, ...telligent, upright judge in the State of New ...rk who, if interrogated upon the matter, would ...y that it is proper for a judge to sit in re...w of his own decisions. Not long ago I put the question to one of our most intelligent and upright judges, who now occupies a seat upon the bench of the supreme court, and does credit to his position. I said to him: "Do you think, sir, that it is suitable and proper to permit judges to sit in review of their own decisions?" He replied: "No, sir, I do not; for, however honest a man may be, however upright in his intentions, while human nature remains unchanged, he will be more or less influenced by pride of opinion." And, as I said the other day upon this floor, many members of the bar and many suitors, believe that there is a practice of log-rolling in getting cases through the general term. Now, I do not know that any thing of the kind exists. Indeed, I have no doubt that the extent and magnitude of the evil are greatly exagerated in the minds of suspicious persons, if it exist at all. I have no personal grievances to complain of. So far as my own practice is concerned, my success has generally been quite as good, doubtless, as I have deserved. I have no charges to make against any of our judges, but only speak of the fact of the existence of this suspicion. Whether it be well founded or not, makes no difference in this discussion, because the tendency in either case is to destroy confidence in the system. There can be no greater evil connected with any judicial system that we may have, than a want of confidence in its administration of justice. Another difficulty, to which allusion has before been made, is the great conflict of decisions in our eight supreme courts, or branches of the supreme court, if gentlemen prefer that expression. Now, I submit to every one who has had any experience under our present system, that this is a great evil. To honest lawyers, who desire to advise their clients properly—to advise them for their own good—to tell them what the law is—this conflict presents a very serious embarrassment. Upon many questions the conflict is so great that no conscientious lawyer will undertake to advise his client what the law is, or how it will be held by the general term, or the court of appeals. To a dishonest lawyer, if such a person can be found, our present system affords facilities for multiplying litigation, and pushing his cases through to the court of last resort, because he can always find decisions to justify it, upon whatever side of whatever question he may happen to be engaged. Sir, if I were to practice law in disregard of all obligations of morality and honor, seeking merely to make money out of the profession, without regard to the interests of my clients, or the interests of the State, I would not disturb the present system. There never was, I believe, a system under the sun that engendered so much expensive and unsatisfactory litigation, as our present system. The law should be certain, it should be uniform, it should be plain—so plain and so certain that every intelligent lawyer could advise his clients with credit to himself and safety to them. Under the present confused and uncertain state of things, when a client comes into our office for advice, and we go to our books to ascertain the law of his case, we are met with conflicting decisions upon the same point, and often find it very difficult to advise with any confidence or safety. We look at a decision, and the first

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question is, who made it? what is his standing and ability as a judge? to what weight is his opinion entitled? Instead of looking, as we did under the old system, to see what the supreme court of the State had decided the law to be, we have to compare these conflicting views—decisions made by different judges in different parts of the State, and out of a maze of conflict and confusion extract the law, or rather what we think the law ought to be. So it comes to pass that the best guesser is the most successful lawyer. And oftentimes what was plain before is made utterly unintelligible by these conflicting and long-winded decisions which "darken counsel." Now, some of the results of these evils to which I have alluded are these: In the first place, the law is rendered uncertain. In the second place, the administration of the law, and the law itself is brought into contempt before the people. In the third place, the court of appeals is clogged, and justice practically denied to the people. I have no doubt that appeals to the court of appeals would be diminished by one-half if we had a supreme court whose decisions were reliable—decisions in which the people, the suitors and the bar had confidence. And, again, it makes justice difficult and expensive, far more so than it would be under a simple, uniform system, in which all had confidence. And this, in itself, is a great evil, because justice should be rendered as cheap as possible, and should be made attainable to the poorest and most humble individual in society. But as it is, under the present state of things, justice is expensive and difficult, for often we cannot obtain it without going through all the courts from the lowest to the very highest; and then, even we are frequently left in doubt whether we have obtained justice. These, in brief, are the evils in the present system which, in my judgment, need correcting. The next question that naturally arises is, what are the desirable features, if any, in our present system? If it has features which are desirable, we should not ignore them, we should not discard them altogether, and introduce something entirely new, for there is always more or less evil in change of any kind. We had better endure some inconvenience than to make a change. There is one feature in the present system which is very desirable and which ought to be retained, and that is the convenience to the bar, and to suitors, in the general and special terms being brought home to the doors of the people. Under the old system there was great inconvenience in this particular as all know who were familiar with it. The general terms were held at Albany, Utica, Rochester, and New York; and most of the members of the bar throughout the State never appeared before these tribunals to argue their causes. They could not afford to do so. The litigants could not afford to pay them to go from their homes to these distant places, and there remain for weeks, dancing attendance upon the supreme court at general term, waiting the call of their cases. The result was, that most of the special and general term business was done by a few individuals located at these places. This was not only a great inconvenience to the bar, but a serious detriment to suitors. It deprived lawyers of the privilege and benefit of arguing their own causes, and also deprived suitors of the benefit of that intimate knowledge which every competent and faithful attorney acquires of his client's cause. Such an attorney is better qualified to do justice to his cause than a counsel overwhelmed with business, who takes up a case upon a brief furnished to his hand, and presents it to the court without any previous knowledge of the case. I have heard, and believe that, on one occasion, when the celebrated counsel, Marcus T. Reynolds and Samuel Stevens, were arguing motions by the basket full before the supreme court at Albany, Mr. Reynolds took up a case and presented an argument on one side. At the close of his argument Mr. Stevens said: "Mr. Reynolds, have you not made a mistake, are you not on the wrong side?" Mr. Reynolds looked over his papers and found that he was mistaken, and had made an argument on the wrong side of the case. The result was, the case was submitted on the argument of Mr. Reynolds and decided against him. It was considered a good joke by the bar, but was not, probably, very much relished by Mr. Reynolds' client. I have no doubt, also, that the feature of our present system under consideration tends to elevate and educate the bar, as was so forcibly said this morning by the gentleman from Rensselaer [Mr. M. I. Townsend]. And, therefore, for these reasons this feature is desirable and ought to be retained. The next inquiry which I propose to make is this: Which of the proposed schemes would afford the best remedy for existing evils, and retain the desirable features only of the present system? It seems to me that this is the proper question for us to discuss and consider. Here are various schemes now pending before this body, and the true question is, which of them will most effectually remedy acknowledged existing evils, and, at the same time, retain the features which are desirable in our present system. And I will first speak of the plan proposed by the gentleman from Chenango [Mr. Prindle]. Although that is not properly before the body, it has been discussed, and, as it will hereafter be offered, I may as well allude to it in this connection as at any other time. In the first place, that prevents judges sitting in review of their own decisions. It does that most effectually. So far as that is concerned it certainly is a good system. There is no doubt on that point, because, as I understand that plan, it is substantially the old *nisi prius* system. It provides for one set of judges to sit in banc, doing no circuit business, and another set for circuit or *nisi prius* business. Therefore, of course, they are entirely disconnected, and no judge can sit in review of his own decisions. In the second place that system secures more certainty and uniformity in decisions. It provides for a bench of judges sitting permanently at general term, day after day and week after week, year in and year out, and there must be, of course, uniformity in their decisions. This would be a great improvement upon the present system. In the third place, it would command the confidence of the bar and of suitors, and diminish the number of appeals, for the reasons already stated. And it might be added in its favor also that it has the feature of

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plicity. There is great simplicity in it; every man understand it. Nor do I feel the force of objection that is made to that system—that ges who sit in banc need the alternation of experience in order to keep them in tune. understand the objection it is, that judges o sit in banc need the practice which they re at the circuit in order to aid them in the charge of their duties at the general term. I ess I am unable to feel the force of this ob-ion. There may be something in it, but I do perceive it. But I would desire to inquire of gentleman from Chenango [Mr. Prindle] or other gentleman who may favor that system. ther it is not open to the objection of incon-nience in the general and special term practice. uld there not be the same inconvenience that ached to the old system? Would it not tend remove from the bar and from suitors the gen-l and special terms, and result in centraliza-—the same evil experienced under the old stem?

Mr. PRINDLE—I believe, under this system, at the Legislature could provide that general ms should be held precisely as they are now. ere is nothing hindering that. It could be pro-ded for there as well as by the Constitution.

Mr. SMITH—That may be so. I put the ques-n for information, because I had not learned at the ideas of the gentleman were on that int. It is possible that the Legislature would ovide against that difficulty, but I do not, for e, like to leave much to the Legislature. I think e bar of the State and the people desire to have presented to them in this Constitution, a distinct, ear, perfect system. They do not care to have ny thing left, or, at least, not much left to the egislature. They want to know before they ote on this Constitution, whether they are to ave any remedies for existing evils or not, and hey desire to see just what those remedies are. And that is one reason why I like the minority eport better than the majority, because it goes further in the same direction, and perfects a sys-em which is merely blocked out in the majority report. I next propose to inquire in regard to the minority report. In the first place, Mr. Chair-man, that provides effectually against judges sit-ting in review of their own decisions. There is no doubt about that. It leaves nothing to the Legislature. It not only prevents judges from sitting in review of their own decisions, but it re-moves them entirely from the court that does sit in review of such decisions. They can neither sit in review of their own decisions nor can they sit in the court that reviews them. I do not know whether this system is fully understood by all or not, as I have not been here during the whole of the discussion, but it strikes me that the general term provided for by it has some features of great merit. I understand the plan to be this: that the State is divided into three depart-ments; that in constituting the general term you have, in the first place, a presiding judge, or chief justice, who resides in his department and sits during his entire term as chief justice, presiding over the general term. You then draw from the other depart-ments four judges—two from each, and these five judges constitute a general term and sit in banc during, I think, the period of four years. They are to go from district to district as may suit the convenience of suitors and the bar, thus avoiding the inconvenience of the old system. It will be seen at a glance that no judge sitting at general term could review his own decisions, because the chief justice does not do circuit or special term business, and the judges drawn from the other departments do no circuit or special term business in the departments in which they sit at general term. They come in, strangers to the parties and the lawyers; they know nothing and consider nothing but the law and the facts of the cases that come before them, and decide questions upon their merits. I recollect that some years ago, upon the occasion of Justice Wilde, of the supreme court of Massachusetts, retiring from the bench (he had occupied the bench longer than any other judge in England or America, except one), there was a meeting of the bar and an address presented to the court. Chief Justice Shaw, then occupying the bench, made a reply, to which I had the pleasure of listening. He remarked in regard to Justice Wilde, that in the decision of his cases he regarded the parties merely as algebraic signs by which to work out the legal problem. Now, Mr. Chairman, in my estimation that is the beau ideal of a judge; an upright, intelligent man, sitting in the seat of justice, and regarding the parties merely as algebraic signs by which to work out the legal problems before him. In the next place, this system of the minority report decreases the conflict in decisions by cutting down the number of general terms from eight to three. Under our present system we have eight general terms constantly multiplying their conflicting decisions; but under this plan of the minority report there are but three departments, and of course three general terms, which would greatly mitigate the evils from which we now suffer. In the fourth place, the minority plan retains the good features of our present system, its convenience and decentralization to which I have made allusion. It provides for holding special and general terms in the districts as they are now held, thus enabling every lawyer to attend upon them and do his own business. It not only remedies the evils that exist, but retains the good features of our present system, which seems to me to be very desirable. But I have heard it objected during the discussion, that this plan is defective, inasmuch as there might be a lack of uniformity in the decisions in the same department, there being a succession of judges, holding only for a limited period. I confess that this feature is the only one that has struck me as doubtful in the scheme. There may be something in the objection, though I do not attach very much weight to it. I think that while it might tend to uncertainty in the decisions at general term in each department, that evil would be compensated by the tendency of the system to secure uniformity of decision between the different departments. The interchange of judges between the different departments would tend to promote harmony of decision throughout the State. While, therefore, there might be some danger of a lack of uni

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formity in the same department, I think that would be amply compensated by this tedency to produce a uniformity between the different departments. There is another feature, also, that tends to obviate this objection. The chief justice is sitting all the time at general term; he presides from the beginning to the end of his term, and this would tend to create uniformity and stability in the court, and prevent contrariety of decision. I come now to the majority report; and, as I understand it, the minority and majority reports do not differ in principle. There is no antagonism between them. The only difference is, as I have already suggested, that the minority report goes further in what I regard as the right direction, and perfects a system which is only blocked out in the majority report. Therefore, I trust that the committee who made the majority report, and other gentlemen who may favor it, will not regard the remarks that I have made on the minority report as in antagonism to their report, or as at all disparaging to their labors. I suppose the minority report embodies the fruits of the long and patient investigation and discussions of the whole committee. The majority report provides that judges shall not sit in review of their own decisions. In that respect it is what it ought to be. It is in the right direction. It relieves to some extent from the evil to which I have made allusion; but it does not, in my judgment, go quite as far as it ought to. It does not exclude the judges, as I understand it, from sitting on the bench while their decisions are reviewed, and exercising an influence upon the result, although they do not actually participate in the decision. They are not excluded from the court that sits in review. I should prefer, therefore, to go further in that direction, and entirely remove from the court of review a judge whose decisions are reviewed. He should not only be prevented from participating in the decision, but should be excluded from exerting his influence upon other members of the court.

Mr. DALY—Does the gentleman think that a judge whose decision is under review could, under a provision of this kind, or under any analogous provision, sit as a member of the court pending that argument?

Mr. SMITH—I do not understand that under this provision he could sit strictly as a member of the court while his decision was under review, but still he would be a member of the court generally that sits in review, and could exert his influence upon the decision. He participates, or may, so far as I understand it, in the argument and decisions of all other cases except those which he has decided in the court below. He stands aside during the argument of cases which he has decided, but it is supposed by some that judges might and would still use their influence improperly; and therefore it seems to me that we ought to provide against the very appearance of any evil in this regard.

Mr. BARKER—Will the gentleman allow me to make a statement in regard to the section reported by the committee. A department for the purpose of giving a general term unites two districts. From these eight judges a chief justice is to be selected, and it is proposed that he preside at the general terms in each of these districts, and that there will be assigned to hold a general term in the sixth district, if you please, the judge who discharged circuit duty and special term duty in the adjacent district, the seventh, if you please; and when you come to hold a general term in the seventh district the chief justice will be there who does no circuit duty and with the judges of the other districts, and thereby you get a general term in which a judge who acts at *nisi prius* or special term is not reviewing his own decision, and you thereby bring home to the suitors and to the profession these general terms to be held promptly and where litigation will be speedily disposed of, and you avoid this sending litigation to distant business centers, which was the system prior to 1846, and which was dispensed with by the Constitution of 1846.

Mr. SMITH—I would inquire of the gentleman whether the system as presented in the majority report, presents these features to which he has alluded.

Mr. BARKER—Most certainly it does.

Mr. SMITH—I did not propose to give in detail these different plans, and if I have in any particular misapprehended the plan of the majority I shall be very happy to be corrected. My only design is to run a parallel between the different schemes presented here, to see which is the best. My object is to draw, if possible, out of these various schemes the best that can be devised. I have no prejudice against any one of them. There are many features in the majority report that I like very much, and I like them so well, that I am disposed to carry them still farther than the committee have done. If I am wrong in my view of the majority plan, if it does embody fully the features that I am trying to commend, I shall be entirely satisfied with it. The majority scheme also goes in the right direction in reducing the number of the supreme courts, or the branches of the supreme court, from eight to four. That would be a great relief; but I should prefer to go still further, if we can do so safely, and reduce the departments to three instead of four. But I had not understood, before the gentleman from Chautauqua [Mr. Baker] interrupted me, that this plan did provide specifically for the organization of a general term. I had supposed that was to be left to the Legislature; but if I am mistaken on that point, and it is as the gentleman states, I shall be glad to know it. I suppose, also, Mr. Chairman, that this scheme of the majority is intended to retain the desirable features of our present system, to wit, the convenience of general and special terms, and also the decentralization to which I have alluded. But still, as I have before said, it had not seemed to me, from the examination I had been able to give the report, that it perfected the organization of the general term, but had left too much to the Legislature. We see by the difficulty that we here experience in arriving at conclusions, and securing harmony of views, how difficult it might be to obtain proper provisions from the Legislature; and while we have the subject under consideration it would, it seems to me, be wise to perfect a system which would satisfy the bar and the people of the State. I trust that gentlemen

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re not members of the legal profession, remember that, in providing a good judiciary m, we are not laboring for the bar of the e of New York alone. True, the members e legal profession throughout the State are ly interested in the matter, yet the judiciary m is emphatically for the people. It is the m by which government administers justice, ces the law, and protects the rights of all— west as well as the highest; and laymen e as much interest, nay, more interest in this r than the profession, and I hope we may be to arrive at a conclusion that will be satisry to all. I have only indicated these general s, and do not propose to go into an elaborate sion of the subject, or into details. So far have been able to examine the matter, I d be willing to adopt the system proposed e gentleman from Chenango [Mr. Prindle]. were entirely satisfied that it would secure convenience of the bar and suitors, and prent centralization which was a serious evil under d system. Next to that it seems to me, the nority report provides the best plan that has n presented. But I think the minority report a great improvement upon our present system, d we can do no better, I shall certainly sus- it, in most of its features, and rejoice that have done so well.

Mr. HALE—Reference was made by the gen- an from New York [Mr. Daly] in some re- ks that be made this morning or yesterday ting to the action of the Judiciary Committee the organization of the supreme court, and ng had the honor to be upon that committee. ot having introduced a plan here which varies m the one reported by the majority of that mittee, I wish to say a word in explanation of course and position of the Judiciary Commit- upon that subject. I think the distinguished tleman from New York [Mr. Daly] was mis- en in saying that with reference to the organi- on of the supreme court there was unanimity that committee. Besides the dissent of the tleman from Tompkins [Mr. Goodrich] there re at least two upon that committee, the gen- an from Oneida [Mr. Kernan] and myself, re were always in favor of a system which uld separate entirely the functions of the ges who sit at general term from those who t at *nisi prius*. A proposition was introduced— bstantially like that read for the information the committee to-day, by the gentleman from enango [Mr. Prindle]—providing for an appel- e bench, the judges of which were not to per- a circuit duty, and for judges to sit in the ferent districts and perform circuit duty. No nority report was presented for the reason that on matters of detail there were other differ- es, and it was thought better that, as we con- red in the main features of the report, we uld present it as adopted from time to time by e majority of the committee, and express our ews whenever we dissented from any portion en the matter came before the Convention. I ght perhaps without impropriety state further at the very close of the deliberations of the mmittee this feature with regard to the organi- ation of a supreme court had been changed so much that the majority of those who were pres- ent then were inclined and did actually vote to adopt a system substantially like that read here by the gentleman from Chenango [Mr Prindle]. I make these remarks that it may not be under- stood, as I think it naturally might from the re- marks of the gentleman from New York [Mr. Daly], that the committee regarded themselves bound to support the report which was made to the Convention in all its particulars. It was un- derstood that upon that subject there would be dissent when we came before the Convention, by various members of the committee. I desire to say a word or two in reference to the objection which was intimated by the gentleman from Chautauqua [Mr. Barker], to the plan proposed by the gentleman from Tompkins [Mr. Goodrich], upon the ground alleged by him that the general term divided into three departments would not be able to perform the business of the State. It was stated by the gentleman from Chautauqua [Mr. Barker], I think, that the number of appeals in the third department under Mr. Goodrich's plan, would be some six hundred; and it was argued from that that one court could not dispose of them all. Now, the ability of the court to dis- pose of these causes does not depend upon the number of causes that are appealed. It is known that very many of these causes which are upon the general term calendar require but comparatively little argument and little consideration. Indeed, many of them are appealed simply for the purpose of delay; and it cannot be determined by the number of causes what time would necessarily be occupied in hearing and determining them. But there is a way in which I think we can get at it, and which I think demonstrates that a general term, capable of division into three departments. can perform all the general term duty of the State. There are held in this State every year, thirty- four general terms of the supreme court, four in each of the judicial districts other than the first, and six in the first district. In my district it is very seldom that a general term occupies more than a week. I understand that is the case in most of the districts except the first. In the eighth district, I am informed that the general term very seldom occupies more than a week. In New York they are longer. In the second district they are some times two weeks, never more Now, let us suppose that the average duration of the general term is two weeks, I am sure it is not any greater than that, I think that is a very liberal allowance. We have then in the eight districts sixty-eight weeks of general term to be held during the year. We have three courts to accomplish that business, Each of these divis- ions, each of these general terms then will have between twenty-two and twenty-three weeks to sit at general term. The remainder of the year, over half the year, they will have for the examination and decision of the causes which are not decided upon the argument Now, I would ask if there is any difficulty in judges who have no other duty to perform except to sit at general term, if they are obliged to sit at general term only half the year, deciding the causes which they are not able to decide on the argument in the other half year? It seem-

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to me there can be no difficulty if this plan is adopted. Three general terms in the State can easily perform all the duties that devolve upon the appellate branch of the supreme court. In regard to these different plans, as I stated in the remarks which I made last week, I prefer the plan presented by the gentleman from Tompkins [Mr. Goodrich] to that of the majority of the committee, for one reason, which I mentioned then, that the number of general terms is less—three instead of four; and secondly, I think the feature in his system, by which four-fifths of the numbers of the general term are constantly drawn from other departments than those in which the terms are held, is valuable; that it will correct one evil which has been commented upon by a great many upon this floor, and which I will not enlarge upon—that of having judges review decisions which, if not their own, are made by associates of theirs who are constantly sitting with them.

Mr. FOLGER—Where does the gentleman find that feature in the report of the minority?

Mr. HALE—It is in document 117, section 9.

Mr. FOLGER—Does that section contain that provision to which the gentleman refers?

Mr. HALE—I understand that it does.

Mr. FOLGER—I do not find it. It leaves it to the Legislature.

Mr. HALE—The gentleman from Tompkins [Mr. Goodrich] can say; I understand that his report provides for five judges; that one shall be the presiding judge of the department, and the four others shall be taken, two from each of the other departments, so that but one judge who sits at general term will perform circuit duty in the department where he sits at general term. Am I right? I would like to know from the gentleman from Tompkins [Mr. Goodrich] if I have stated it correctly.

Mr. GOODRICH—It is in section 9.

Mr. HALE—It is so; section 9, of document 117. The gentleman from Ontario [Mr. Folger] will find that the composition of the general term is as I stated. But, although I shall vote for the substitute of the gentleman from Tompkins [Mr. Goodrich] as a substitute for the amendment proposed by the gentleman from Steuben [Mr. Spencer], still there are other plans proposed here which I prefer. I prefer the plan suggested by the gentleman from Chenango [Mr. Prindle], which, like that of Mr. Goodrich, divides the appellate branch of the court into three divisions, but confines the judges who are elected for that purpose, to general term duty. In detail, perhaps, I should not acquiesce in all the features of the proposition of the gentleman from Chenango [Mr. Prindle]. I think, for instance, that the appellate bench might better be elected by the people of the whole State, as is proposed by the gentleman from Ulster [Mr. Cooke], and as was proposed in the amendment which I offered last week, and which was voted down by the committee. I think that plan has advantages over that presented either by the majority or the minority of the committee. As I said before, it is a plan which met with considerable favor in the Judiciary Committee. The objection which was made to that plan by the gentleman from Fulton [Mr. Smith], that it would tend to centralization, and would do away with the conceded benefits of the present system in having general terms in all parts of the State, is not, I think, well founded. There would be no difficulty in a provision by the Legislature, if the general term was so constituted, for an appellate bench so constituted to hold general terms in all the districts of the State precisely as they do now. Four general terms are held in each district, and under the plan proposed by the gentleman from Chenango [Mr. Prindle] there would be no difficulty whatever in holding four general terms every year, if it is desirable, in each district, still. The gentleman from Rensselaer [Mr. M. I. Townsend] argued against all the plans that have been proposed as substitutes for the present system, both the majority plan and that of Mr. Goodrich, and it would apply equally to Mr. Prindle's plan, upon the ground, as he said, that suitors and lawyers would be compelled to go great distances to attend general terms. Why, Mr. Chairman, that is entirely within the control of the Legislature. It is easy, under any system that has been proposed here, to provide by a judiciary act that causes shall be noticed for argument only in the districts in which they are triable. My friend from Rensselaer [Mr. M. I. Townsend] would not be in danger of being taken up to Plattsburgh or to Buffalo to argue his causes which originated in the third district. It might be so provided under any of these plans, precisely as it is now. It is a feature of the present system which all concede to be valuable, that general terms should be held in each district, and that causes should be noticed for argument only in the districts in which they were triable; and I would say to my friend from Rensselaer that under the present system, it is the Legislature and not the Constitution that gives these conveniences. The Constitution of 1846 does not provide that general terms shall be held in each district, and that causes shall only be noticed in the district in which they are triable; it is in the judiciary act that we get that provision, not in the Constitution. Therefore it is unjust toward the majority report and toward all these plans that have been offered in place of it, to say that any of them are inferior to the present system in that respect, because there is not one of them that does not go just as far as the present system in requiring that causes shall be argued in the district in which they arise—that is, none of them make that provision positively, but they all leave the matter in the hands of the Legislature, which will no doubt exercise that power in the future as it is already done under the present system. I have said that, as between the propositions pending before the committee, I am in favor of that proposed by the gentleman from Chenango [Mr. Prindle] or by the gentleman from Ulster [Mr. Cooke] separating entirely appellate and banc duties. In the plan which I offered the other day, and which seemed not to be clearly understood by all, my idea was to try to obviate the objection which was sometimes made to separating judges completely either from banc or from *nisi prius* duty. By the plan which I offered, twelve judges would be elected for the State. Those judges were t

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power to sit at general terms and also to circuits. The justices or circuit judges, or however you may call them, were to be elected by electors of each district, and were to hold terms and were also to be allowed to sit at general term. In order that the greater part of the State duty might be performed by those State officers elected by the people at large, I proposed a provision that the general term should be held by not less than three judges, or two judges and a justice; and a further provision that no justice should be allowed to sit at general term in the case for which he was elected. It will be seen that under that plan both the judges and the district or circuit judges would be allowed to participate in both kinds of duty. As between that system, however, which provides for the election of all of these judges by the same constituencies (if I can term them such) and other propositions which have been made here which propose an entire separation of banc and circuit duties, I am in favor of the latter; and I think that the simplicity and unity which we should get by the adoption of a plan substantially like that of the gentleman from Chenango [Mr. Prindle] would more than compensate for any fancied advantage —or I think the advantage is to some extent avoided—of combining both duties in the same judge.

Mr. BARKER—It seems to me that, as this discussion has now proceeded so far, it is proper to offer a few suggestions in vindication of the report of the majority of this committee. It is well to bear in mind that, in organizing a supreme court, we bring into existence the only tribunal of general and original jurisdiction in the State, and its organization contemplates two things, offering facilities for the trial of causes at *nisi prius*, special term business, and also affording to suitors an opportunity for a review of their cases, upon an appeal, in the same court; and the only point of difference presented in the different propositions is as to the mode and manner in which the court called a general term, in which the first appeal from the hearing at *nisi prius* is to be heard, shall be organized. I shall occupy the attention of the committee but a few moments, and I will proceed briefly to discuss the objection which is made to the present system. In the first place, allow me to state it, for it seems not to have been yet stated, though all of us are, I suppose, familiar with it. We have, under the present system, a general term, in which are heard on appeal the questions decided by referees, and the trial of causes at special term and at circuit, and where the first review is had of all questions raised in criminal proceedings. That court is composed of four judges, and by practice, though not by constitutional provision, it is composed of the judges who reside in the respective districts. Now, I ask lawyers and laymen what are the objections to this court as it is now organized? We have listened to much debate upon this subject, but I believe only two serious objections are made. The first is that the judge in that court sits in review of his own decisions, and the next is that there being four of these courts there is conflict of decisions in the supreme court, and not that degree of uniformity prevails which is desirable and which gives to suitors the idea that they have not had an intelligent and impartial hearing. Now, in regard to the first objection, in my opinion, it is more imaginary than real, and if a judge who is sitting in review of his own decisions will become partial and prejudiced because he stands committed to a decision in the haste of a circuit trial, I assure suitors and lawyers that if a judge wishes to urge partial views and opinions, in disposing of the business before him, he will have the least opportunity at general term. But I yield, and the committee has yielded to this objection on the part of the profession, and they propose to avoid it, and how? By uniting in a territorial department, two districts for the purpose of electing judges and creating this general term. When thus created, it will consist of eight judges, four of whom are to reside in the respective districts, and then when the general term is created, a chief justice being provided, he will preside at these general terms; there being four judges in each district as is now the practice and to be increased as the administration of justice demands. This chief justice will have quite as much business as he can attend to, although he may sit in circuit. I will illustrate this by citing the seventh and eighth districts. A general term is provided for the seventh district, the chief justice presides, and by allotment the judges of the eighth district, go there with him and form a court of review. They are then sitting in the district where they have not participated in the trials at *nisi prius*; yet the term is held at a place convenient to their own home and they got there and back again without much loss of time or at great cost. Then in the eighth district the chief justice comes again to sit in this court, and brings some of the judges from the seventh district and so you have practically a court organized, none of the judges of which have participated in the decisions to be reviewed.

Mr. SMITH—Will the gentleman allow me a question?

Mr. BARKER—Most certainly.

Mr. SMITH—Will the gentleman state where, in the report of the majority of the committee, is there a provision that judges constituting the court at general term, shall be drawn from other districts?

Mr. BARKER—There is no general provision, but it is left for the Legislature to make that provision, and it is presumed that that body will have quite as much wisdom and will regard the necessities of the case quite as wisely as this Convention.

Mr. SMITH—Then if there is no such provision in that report, why did the gentleman interrupt me, when I was making that statement and tell me that I was mistaken in regard to it, and say, *sotto voce*, that I did not comprehend the system.

Mr. BARKER—I did not design to treat the gentleman discourteously, for I respect him as highly as I do any gentleman in this Convention. I know that he has much acumen and ability in debate; but I have perceived that his talent is brighter when he is finding fault, than when he is pointing out a path for this Convention to follow. I say that the Legislature is the proper body to make provision for organizing the gene-

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ral term. And now let me make some criticism upon the minority report, which is presented by an earnest, an intelligent and devoted lawyer, the gentleman from Tompkins [Mr. Goodrich]. I say, that if this court of review be organized after his plan, it will be overwhelmed at the end of twelve months, and there will be a calendar at each general term as large as that which now incumbers the court of appeals, and decisions will be indefinitely postponed. The gentleman proposes a plan which it is utterly impossible to carry out successfully in practice. Judges have not the physical power to perform the labor that would be imposed upon them. Let me illustrate. He brings three of the present judicial districts into one department, and provides that all the causes shall be first heard in the general term created for the department. Now, it is a well known fact, which has existed for twenty years, and no one will deny it, that each of the general terms in this State disposes in a year of not less than two hundred causes; most of them causes that involve much examination, deliberation and hard labor. The gentleman proposes to bring three of these districts into one department, and to impose all this work upon one court, which will have six hundred causes to hear and dispose of each year. Now, I do not care whether this court is composed of six judges or nine judges, it cannot do this work. No one man can participate in the disposition of that number of cases with justice to himself or to the suitors.

Mr. GOODRICH—I desire to state that the number of cases for review in the sixth district is scarcely more than one hundred and twenty-five in a year, and in the sixth, seventh, and eighth the whole number in a year will fall considerably short of six hundred cases, the larger part of which require but little time to decide.

Mr. BARKER—Well, I will take the gentleman's own numbers which he presented yesterday, an average of five hundred and ninety or five hundred and seventy. The court of appeals disposes each year of about three hundred cases, and from each of these departments come about one hundred of these cases, so that you have imposed upon each of these general terms one-third of the business which is annually disposed of in the court of appeals. You can say if you please that the most difficult and doubtful cases go into the court of appeals for review, yet they require as much or more labor at the hands of the judges in the general term as in the court of appeals, and I submit to the observation of every intelligent lawyer in this State whether one-third of the business which comes before a general term is taken into the court of appeals for another decision. Then again the gentleman's plan provides that this chief justice shall preside at all these general terms and participate in all these decisions; and it is certainly more than any one judicial character in this State has ever yet done to hear six hundred cases in a year. Then again his plan is exposed to another objection. It brings to these general terms judges from the most remote and distant parts of the State. When they are there they are a long distance from their homes, and just as soon as the arguments are closed and the court adjourns the judges are separated and scattered again throughout the State, and have no further intercourse or acquaintance and no familiarity with each other's minds, so that when they come together to make their decisions they are made upon a mere vote without that due deliberation and consultation which should be had. I submit further, that this plan is subject to another objection, to my mind a very serious one, although I base it wholly upon my own limited and humble observation. It is that the judges who compose these general terms are not familiar with the bar before whom they appear as they migrate from place to place throughout the State to hold this court; and for the purpose of facilitating arguments and of coming to an accurate and full understanding of the causes heard, I think it is very desirable that the judges and the profession should be mutually acquainted. It will shorten argument, the judges will know the peculiarities of the counsel's mind, when he is acquainted with him, and they can communicate with each other more freely, suggest ideas to each other without offense, and thereby shorten the argument which is always protracted when the court and the counsel are strangers. Now, there is no difference in theory, no practical difference, between the report of the minority of the committee and the majority, because they both proceed upon exactly the same idea, which is, diminishing the number of general terms and accumulating business in the court. The proposition submitted by the gentleman from Chenango [Mr. Prindle], proposing the plan of organizing the court which was rejected in 1846; and one of the advantages supposed to be gained by dispensing with that system and adopting the present was that the judges who sat in review should at times go down to hold circuits, and that the judges who held circuits should sit at times in this court of review; the gain supposed to be derived from it being that the judge at general term becomes somewhat familiar with the temperament of the people and the character of their litigation, and that in general term again, he has the advantage of hearing deliberate argument of causes thoroughly prepared by counsel which he then takes to his chambers and carefully examines, submits his mind to the discipline of writing out opinions that are to be exposed to the criticism of the profession and reported in the reports, and thereby his mind becomes more accurate and acute in the examination of legal questions; so that when he presides at circuits he escapes the errors into which judges are likely to fall who have not had opportunities of hearing deliberate arguments. As for myself, if I were to submit a proposition that in my judgment would be preferable above all others, I would vote to retain the present organization of the supreme court. I would have it in distinct departments, as small as the districts now are. I would vote also for the proposition that the judges of each district should hold general terms in the adjoining district; but that is substantially provided for in the report of the majority, and I shall give it my support heartily.

Mr. SMITH—I desire to make a brief explanation so as to be right upon the record. In the few remarks submitted by me, I stated that the majority report, as I understood it, did not pro-

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vide specifically for general terms composed of judges drawn from other districts, and that I preferred the minority report because it did adopt and carry out that plan. The gentleman from Chautauqua [Mr. Barker] stated, as I understood him, that I had misrepresented the majority report, and that it did provide for the very thing that I condemned it for omitting. I asked him if the majority report did contain that feature, and I understood him to say that it did, and he remarked somewhat contemptuously upon my want of apprehension of the system. I did not know but I had unintentionally misrepresented the scheme, and stated that if I had done so I would be glad to be corrected, and to know that the majority scheme provided for a general term like the one presented in the minority report. I understand the gentleman [Mr. Barker] now to admit, what I see by looking at the report is the fact, that it does not provide for bringing judges from other districts or departments to compose the general term, but leaves the organization of the general term entirely to the Legislature. Now, all I desire is to have this matter distinctly understood by the committee. I have myself no disposition to misrepresent any thing or any body, and no one will gain any thing by misrepresentation. I am sorry that gentlemen of the majority of the committee should feel sensitive in regard to this matter. I made my remarks entirely in kindness, and with no disposition to disparage the labors of that committee, for I know that they have worked very carefully and conscientiously, and have probably done quite as well as any other body of men could have done. I hope the gentleman from Chautauqua [Mr. Barker] will not understand me as desiring to misrepresent the committee, and on the other hand I do not desire to be misrepresented myself, and I do not mean to be.

Mr. EVARTS—The organization for so large a State as this, of a great and principle court of original jurisdiction that shall constitute a magistracy, and a judicial establishment, that shall have the traits of being really a State and not a local magistracy and tribunal, is a task of very great difficulty. It must not be lost sight of, that beside the great extent of our territory and the number of our population, and the activity and variety of the interests that prevail in so strenuous a community as ours, we are by no means confined to this territory, or to this population, or to these domestic interests, as the measure and the source of the judicial business that is to be performed by the establishment we are to create. This territory of ours, this population of ours is not of a community made up of its size according to the ordinary principles by which independent communities are collected. It is a community of four millions occupying the area of the State of New York, but it is a community collected within these limits out of, in some sort, the whole country, with its thirty millions of population. It will not do, therefore, in estimating a plan for the organization of the judiciary of this State, to be governed or guided simply by the experience of other communities of the same population and territory. Besides the fact that this community of ours is collected here to do the business in the various departments of life that belong to a great nation in reference to commerce, in reference to internal traffic, in reference to what makes up our peculiar and superior position toward the rest of this country over any other local population of the same magnitude, we must remember that the tendency of railroads and of telegraphs is to concentrate here within our territory the business interests of great populations that never come here themselves. The city of New York, Mr. Chairman, presents, as I believe, as much as one-half of all the judicial business that needs to be the subject either of appeal or of deliberate original determination in any court of this State. It does not present that business as the share of the million of people that live on that island, but Wisconsin, Georgia, Maine, Louisiana, California, are all the while furnishing food to our tribunals of justice in litigations growing out of transactions which really never have any locality here. Now, I apprehend that the committee deserve some respect for their labors when it is found that they have attempted at once to give a framework which is capable of working, in this difficult state of affairs, as a court of original jurisdiction, and yet have left it as free as possible to the molding hand of the Legislature, through proper judiciary acts, to provide the suitable working apparatus, within the scheme of the Consititution, and to qualify and improve it, if it shall be necessary, from time to time. The principal difference, as I think, between the scheme of the majority of the committee, as proposed for the acceptance of the Convention, and the scheme of the minority, as insisted upon by our friend from Tompkins [Mr. Goodrich], is that he has undertaken in his scheme to infix permanently in the system of the Constitution more of the features of a working apparatus that properly belong to the judiciary act than is consistent with wise statesmanship. If you will read the section of the committee's report which relates to the constitution of the supreme court (the sixth section of the report of the majority of the committee), you will see that it is very brief and very general. What we claim for it is that it recognizes the difficulties of the situation, provides a sufficient force of judges, makes a new partition of territory into four departments, and provides therefor but four several heads (as many as are needed) of judicial revision in the supreme court. The report of the minority undertakes to provide for the constitution of departments, for the election of justices to sit in banc for fixed periods of time, and to subtract from the thirty-six judges, who make up the whole working force of this court of original jurisdiction in this State, under the circumstances that we have alluded to—to subtract from that whole number of thirty-six, fifteen judges who are to sit constantly in banc and do nothing else. You have then in the three departments of the State constituted three supreme courts in banc of five judges each, and those five judges are to do nothing but sit in each department in review of litigations that are to be sent up to them from the original jurisdiction of only twenty-one judges who are engaged in the business of hear

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ing causes at circuit and at special term. Now, there, you have a court in banc of fifteen judges sitting all the while, and as the learned gentleman from Chautauqua [Mr. Barker] has said, you have a mass of business for review in the courts thus constituted, that in magnitude approaches very nearly the business that is submitted to the court of appeals. What is the principal function of this supreme court? It is the original trial of causes, it is the original investigation of matters in litigation; and the great feature that you wish to preserve for this tribunal in its original jurisdiction and investigations, as well as the inexorable conditions of population and territory will permit, is that of being a court of the State and not of the locality. You wish to get rid, as far as you can, of what is the condemnation of the system of the Convention of 1846, that it obliterates and strikes out of existence any tribunal of original jurisdiction that can properly be called a court of the State. You have, under the present Constitution, nothing but so many local courts according to the number of the districts; and though you call it, as you do in the city of New York, a supreme court, side by side with the court of common pleas and the superior court, every body knows that, to all intents and purposes, the supreme court in the city of New York, is as little a State court and as much a local court, as either the common pleas or the superior court. Now, it is desirable, if possible, and I agree that the inexorable conditions to which I have referred render it possible to but a very moderate extent—it is desirable that there should be courts of original trial in which the suitors, the plaintiff being from one part of the State and the defendant from another, should feel that they are not in a local court; that if a suit be pending in Buffalo, brought by a New York plaintiff against a Buffalo defendant, or in New York by Buffalo plaintiff against a New York defendant, you may have some security that it is not a judge of the locality that is to sit thus in the original jurisdiction between the parties. If this State were no larger than Massachusetts with its population and its wealth and activity, great as they are, we should have been able to provide a court which would have come up to the true idea of being a State court, with its judges itinerant throughout the State, holding circuit and special terms, and then sitting in banc, in review of the first procedure of investigation. But, we were met constantly by the difficulties of the geographical dimensions and immense population, and the great and growing business of the State. We have attempted to make as reasonable an adjustment as possible between these ideas of strict locality in a court, and of having a representation of the State in this original investigation, by division into departments. We want to get rid at least, of the narrow characteristics of the court as established under the present Constitution. I have said that the great and principal function for which, as a basis, we wish to provide, for which we wish to furnish an adequate force, is the original procedure in litigation. In respect to review, in this court, we feel it necessary to provide only what will accomplish more deliberate revision of what has been done at the first investigation, by passing, in our general term, upon the questions whether errors have intervened at the trial or in the judgment of single judges at special term, which, on more careful consideration, seem to be errors of oversight, or haste, or misconception, by which the state of the proofs has been left imperfect, or indicating that new trials, for discretionary reasons, to get at the justice of the matter, might properly be required. When we have furnished that corps of revision, of judges sitting at general term, not being the same who have presided in the original investigations, we have done all that we think it is possible to do, in a court that has this immense public service of original jurisdiction to perform. We have felt that if new problems of law come up for solution, if new and difficult questions of general application need to be solved, they are very likely, they are sure, to go to the court of appeals; and we suppose that we have provided in the constitution of that court an adequate number of judges and a sufficient independence to secure the possession of their time and attention, for the function that is devolved upon them. We, therefore, for our report upon the court now under consideration, claim that we have done, with the number of judges placed at the disposal of the committee, the best that could be done in the arrangement and distribution of the force of the court between the great and principal function of original investigation, and the function of review, within the court, for the correction of errors and to settle the facts of litigation, for the ultimate decision of great questions of law by the court of appeals. Now, I must confess, Mr. Chairman, that if we are to depart from this scheme of the committee, and are to choose between the methods that are to promote the bench of review in the supreme court, as being the principal feature and function of the court (as the plan of the minority of the committee does), or, despairing of attaining practically the advantage of a State court, in distinction from a local court, give up that proposition and adopt the constitution of the supreme court as it now is, modifying it, if you please, by not permitting the judges to sit in review of their own decisions, with other circumstantial changes, I, for one, should prefer to take the supreme court as it is, and give up the hope of making it better than it is, except in some circumstantial changes, Mr. Chairman, you may depend upon it that the convenient, the ready, the satisfactory discharge of the first great and principal function of original trials is what is expected from the supreme court of this State. The bar expect it, the suitors expect it, and the community must have it; and it never will do to turn it into three great courts permanently sitting in banc. But I should greatly prefer the compromise and adjustment which has caused the Judiciary Committee a great deal of discussion and a great deal of labor, and which we have presented in our report, and I hope that this Convention will not hastily depart from the report of the majority of the committee.

Mr. BECKWITH—I have listened with considerable interest to the argument of the gentlemen who have preceded me, and have come to the conclusion myself that the proposition of

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the majority of the committee is best calculated to accomplish the object which we all desire to secure. That proposition is general in its terms and leaves the Legislature by a wise judiciary act to avoid all the objections which have been made to the present system except one, and that one is conflict of decisions, which we must always expect while we have different courts existing in the State. Now, if this system which is proposed by the majority of the committee be adopted it will be in the power of the Legislature, by a proper judiciary act, to direct or provide that the judges who sit in general term shall not sit in the district in which they are elected, except the chief justice. That will leave the judges of the supreme court to hold the circuit and the special term in his district; and then when we come to the general term, the judges of an adjoining district of the same department, except the chief justice, will hold general term. Now I do not myself think it wise that we should attempt to introduce into the Constitution we are endeavoring to frame, to go into details and do that which strictly belongs to the Legislature. In my judgment all that is necessary for us to do is to organize a court and leave it in such form that the Legislature can provide for its proper working; and I think that the report of the majority of the committee leaves it in that condition; for you will see that they provide that there shall be in each department except in the city of New York eight judges to be elected, that one of them shall be elected as chief justice and four of them shall be designated to hold a general term, three of these to form a quorum for the transaction of business at general term. Now, that leaves it in the power of the Legislature to provide that those judges designated to hold general term shall be drawn from one district in a department to hold the general term in another district in the same department, and thereby we shall get rid of the objection that a judge is permitted to sit in review of his own decisions. I think myself that it is very desirable that the court should be constituted so that a judge shall not sit in review of his own decisions. It may be that a judge who has heard a case at circuit and is familiar with the facts of the case is in a better condition to decide it than one who hears it for the first time on the argument at general term; but there is the other objection that the judge by deciding the case at special term has come to the conclusion that his decision is right, and he has argued himself into so firm a belief in his own correctness that it is impossible to convince him that he is in error. The objection in no way impugns the motives of the judge, since we all know that we can argue ourselves into the belief that we are right. This objection we desire to get rid of. There is another provision that I desire to put into the Constitution, and I am not certain but it is in some provision. It is that no judge shall sit as referee in the trial of a cause. The Legislature at one time took away from the judges this right but they afterward restored it, and I think it operates badly. Judges should be paid a salary sufficient to compensate them for their services, and should not be allowed to sit as referees in order to increase the amount of their pay. For these reasons, sir, I am decidedly in favor of this system. I prefer it because it is general and flexible, and does not go into detail, but leaves it where the Legislature can, by a wise judiciary act, provide for the workings of the court in such manner as to get rid of all these objections except that of conflict of decisions.

Mr. ANDREWS—Mr. Chairman, I shall not detain the committee for a long time in what I may say on this pending question. It is unquestionably a most difficult work which this Convention has to do—to determine the outlines of the judiciary system of the State; and it is very proper, in my judgment, for the purpose of exciting attention to this question, that the variant and conflicting views of gentlemen upon this subject should be presented to the committee. It, perhaps—and it probably—is true that the report of the majority of the judiciary committee upon this subject does not contain the very best system of judiciary for this State, which can be devised; but this Convention has met, in the discussions upon this subject, with the precise difficulty which was encountered by the committee in their deliberations, to wit: a great variety of views as to what should be the system to be adopted; and this report, signed by all but one of the members of that committee, contains their best judgment after full discussion, as to the system which should be adopted. Now, there are two entirely diverse theories upon this subject, one which has been maintained by several gentlemen upon the floor, and which is involved in the amendment offered by the gentleman from Chenango [Mr. Prindle], that there shall be an entire divorce between the branches of judicial duty, that relating to the trial of cases and that relating to their argument and decision upon appeal; and the other theory is that which proceeds upon the assumption that the performance of circuit and banc duty by the same judges is essential to the best development of judicial character, and the most efficient discharge of judicial functions. Now, it is true, Mr. Chairman, that in the committee the project of divorcing these two branches of judicial duty was discussed and advocated by some members of the committee. It was the system first introduced in this State by the Constitution of 1822, and many recur with pleasure to the history of that court and the character of the many eminent judges who adorned it, and to the dignity and influence which always accompanied its judgments and decisions. But it is nevertheless true, Mr. Chairman, that the theory upon which common law courts are organized, is to combine the duties of a *nisi prius* with the duties of an appellate judge, and to so provide that judges sitting in common law courts shall discharge, a portion of the time, the duties of either position. That is the English system, from which our own is in a great measure copied. It is the system of the United States court, and it is I believe the system of the common law courts in all the States of this Union, and my recollection is that this separation of function occurred for the first time in this State in 1822, and that this was the only exception within the United States where these courts were

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not organized upon the theory of combining these duties. And it is doubtless true, Mr. Chairman, that there are advantages in this commingling of duties and in giving to a judge experience both in hearing arguments and in the trial of cases. Experience in the trial of cases gives him a more comprehensive view of the meaning and force of the rules of law, and tends to restrain to some extent that too technical application of such rules which is apt to be made by a judge whose only function is to listen to arguments and determine from adjudged cases the questions which may come before him for decision; and it is my recollection, from reading the life of Mr. Justice Story some time since, that, in a letter to Mr. Webster upon this subject, after the federal courts were reorganized, and circuit duties were imposed upon the judges of the supreme court of the United States, he said that he was conscious that he was a better judge in term, by reason of the experience which he acquired upon the trial of causes. If we are to establish a court in which circuit duty shall be divorced from general term duty, we can only adopt a suggestion like that which has been made by the gentleman from Chenango [Mr. Prindle]. If the committee decline to adopt that system then there is left only the system now existing in this State, with such incidental modifications as may improve its working hereafter. The difference between the majority and minority reports is not a difference in the principle on which courts should be organized. It is a simple difference in detail, and I shall attempt to show during the course of the remarks which I shall make, that the real difficulties in the present system, if the general purpose and scope of that system shall remain, are more likely to be obviated by the adoption of the report of the majority of the committee than by adopting the report which has been presented and so ably advocated by the gentleman from Tompkins [Mr. Goodrich]. I take it, Mr. Chairman, as the result of the vote taken upon the proposition of the gentleman from Essex [Mr. Hale] the other day, that the sense of the committee is that there is to be no separation of circuit from general term duty, introduced into the judicial system of this State.

Mr. HALE—Will the gentleman allow me to remind him that the amendment did not contemplate separation. The amendment I proposed provided that judges elected by the State at large should have power to hold circuits, and justices and circuit judges should have power to sit in the general term out of their own districts.

Mr. ANDREWS—I may be mistaken as to the purport of the amendment of the gentleman from Essex [Mr. Hale], but assuming that we are not to depart from the theory upon which common law courts are organized, it simply remains for us to consider what improvements may be made in the existing organization and what improvements, if any, are suggested in the report of the majority of the committee. The gentlemen of this committee are familiar with that section in the Constitution of the United States, under which the federal courts are organized, which provides "that the judicial power of the United States shall be vested in one supreme court, and such inferior courts as Congress may, from time to time, ordain and establish." Under that simple statement of power the United States courts have been organized by the action of Congress. It is flexible in its character; it allows changes from time to time to be made in their organization, as such changes are shown by experience to be necessary. And while I do not doubt that there must be more complexity in the frame-work of a judicial system for our State, still I think gentlemen upon the committee will agree with me, that the simpler and the less complexity there is about this frame-work; the more flexibility and elasticity there is given to the system, so as that the Legislature may, from time to time, adjust its details to meet existing wants and to remedy existing evils; the better it is for the State, and that it is the safer course for those who are attempting to frame the organic law of the State, which cannot be changed in the ordinary course of legislation. In my judgment, Mr. Chairman, this is one of the advantages of the system reported by the majority of the committee over that reported by the minority. Because if the specific organization of the courts, recommended by the minority report, should be adopted, and if experience proves that it does not work so well and so easily as it is supposed it will work by gentlemen who favor it, you cannot, through the action of the Legislature, change it in any respect: it is cast in an iron and an inflexible mold, and can only be altered by a change in the organic law. The minority report provides not only for the division of the State into three departments, but it fixes the boundaries of these departments, and provides that the number of departments shall never be increased. It provides for the organization of general terms, to be composed in a certain way, and a certain method of selection of the judges to hold them, and that the judges who serve in general term shall serve for a certain number of years, and shall not, during that time, discharge any other judicial duty. Now, it may be an admirable system, but I say, if it is adopted, it leaves us without the benefit of experience in respect to it, while, at the same time, it determines, so long as the Constitution shall stand, the precise character of these courts, including the number of judges who are to hold them, and the nature of the duties which, from time to time, they are to perform. The system reported by the majority of the committee authorizes precisely the same arrangement to be made of the general term that is proposed by the minority, but it does not undertake to determine that that particular method of organization shall be adopted. It leaves to the Legislature, after dividing the State into departments and determining the number of judges, the work of molding and organizing the general terms and determining what judges shall hold them. It leaves the Legislature to provide that the judge doing general term duty may also do other judiciary duty, or to separate the two branches of judicial service, and to prohibit a judge, while assigned to duty in the appellate court, from participating in the trial of causes. And it is for this reason as one, that the system of

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the majority is a flexible one, capable of being adapted to existing exigencies, and that the system of the minority is an inflexible one, that I prefer the system reported by the majority. But, Mr. Chairman, there is another difference in the two propositions. The report of the minority of the committee provides that there shall be three departments, and that twelve judges shall be appointed in each. That gives thirty-six judges in the State. The report of the majority provides for the appointment of thirty-four judges, making two less in number. The report of the minority of the committee authorizes the Legislature to increase to any extent the number of judges, while the report of the majority of the committee provides that the Legislature may add a single judge in each district, if, in the judgment of the Legislature, that shall be required. Now, while many things should be left flexible, I believe it has been the custom in the Constitutions of the several States to fix the number of judges, and not leave it to the discretion of the Legislature, except under strict limitations. It seems to me that we should provide a sufficient force to do the judicial business of the State, and not leave it to the Legislature, without limitation, to determine when and how many judges shall be added. There is another objection, which seems to me to be a valid one against the report of the minority of the committee. For the purpose of obviating the difficulty arising from a judge sitting in review of his own decisions, it is provided that in each department there shall be a chief judge and four associate judges, two selected from each of the other departments, to constitute a general term. It is further provided that this court so organized is to continue for two years, confining itself simply to general term duty, and the judges who shall sit in those general terms to perform no other judicial functions whatever. This is an unequal distribution of the judicial power of the State. The result is if this system is adopted, you devote fifteen of the thirty-six judges of the supreme court to the sole duty of acting as judges upon the bench of the general term, leaving all other judicial services to be performed by the remainder of the thirty-six judges. I say this is an unequal distribution of the judicial power, thus to provide for three general terms, with five judges sitting continuously in each, doing no other duty. It is said that the average length of the general terms through the State is about a week. There are four held each year in each district, and two of these districts are to form a department. So you are to have eight weeks in each department of general term duty to be performed. And for the purpose of accomplishing that amount of labor, in hearing of arguments, you set apart in each department five judges of that court. They act eight weeks as a court, and the other ten months of the year is left for the consideration and decision of their cases. Now, if we are to have a court of this description, and the judges composing it are to be excluded from other judicial duty, I think three is an ample number in each department, and that it is a waste of material, an entirely unnecessary expense to the State to devote in each of those departments, five of the judges to do the work And in my judgment three judges would act more efficiently, as a general term in each of the departments than the five men according to the report of the minority of the committee.

Mr. SMITH—Will the gentleman allow me? As he and the gentleman from Chautauqua [Mr. Barker] acted together in the consideration of this scheme before the committee, I would like to know how they reconcile this discrepancy? I understand the gentleman from Chautauqua thinks this will be utterly inadequate and that there will be a vast accumulation of business, worse even than in the court of appeals. I understand the gentleman from Onondaga to hold that this would be a waste of power—too many judges.

Mr. ANDREWS—I understand that it is lawful argument to assume the premises of your opponent and therefrom to show the invalidity and untenability of his position. But there is another thing in respect to this. I say that in this bench of five judges you would have a worse arrangement of the appellate court than you have under the present system. And why? Because it is liable to the objections that have been urged against the court of appeals, as now constituted, to wit: the fluctuating character of that court caused by the short period of service. You appoint a chief justice in each department, and then you take from each of the other departments two judges, and put them together—for how long? Why, for two years continuously, and then they are remitted to the ranks again, and another bench from those who had been serving at circuit is made up to be dissolved again in turn, within two years from the time of its creation. In my judgment such a court would not and could not act efficiently in the discharge of the business coming to it, and it would be liable to objections which so forcibly were urged against it by the gentleman from Cayuga. You are making a chief justice this year of the man who next year is to occupy the place of circuit judge, and whose place is supplied by the circuit judge, who in turn takes his place upon the bench as chief justice and overrules the decisions of his own predecessor in the same office. You would create that conflict of feeling and that prejudice arising from the interference of one judge with the decisions of another, and you would give the amplest opportunity for the growth of just that discord between the different members of the judiciary of the State which is one of the main objections to the court as now organized. Upon all these views if we are to change the present system, I think the plan reported by the majority of the committee, is by far the best. It is a compromise between our present system and other systems which have been suggested, like that of the gentlemen from Chenango [Mr. Prindle]. If we adopt the principle that judges ought to perform all kinds of judicial duty, then any plan we may adopt is simply an attempt to correct so far as we can the difficulties of the existing system, without changing its general character. The existing system allows a judge to sit in review of his own cases. That is expressly prohibited by

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the provision contained in the report of the majority of the committee. The existing system allows of eight districts and of eight general terms each announcing as a co-ordinate branch of the same court its separate views and decisions upon questions of law coming before it. Does any man doubt that if a single general term in this State was competent to do all the judicial business belonging to our general terms it would be far better to have a single one than eight separate branches of the same court; and if eight are objectionable by reason of permitting discord in the decisions, reducing the number one-half is certainly an improvement. It reduces these separate jurisdictions by one-half, and there will be less danger of conflict of decisions where there are only four branches of general term in the State, than where there are eight. Now, it might be that three general terms would be better than four. But I think it is not safe, knowing the amount of business already existing in the State, and that litigation is increasing and is likely to increase during the next twenty years—it is not safe for us to reduce the general terms to less than four in number. Doing that, we do a great deal; doing more, it may be that we will render the system inadequate to the wants of the State. But I do insist that it is far better to have the general terms organized as they now are, but with the provision excluding the judge taking part in the decision of cases appealed from the circuit where he presided, than to organize them in the manner reported by the minority of the committee. The judges in each district work together and act together. They become acquainted with each other. They regard and know the decisions of their own districts and their own courts. The plan proposed by the committee will obviate the objections that apply to the other plan; and while it will be competent for the Legislature to organize the general terms as proposed in the minority report, it is not wise to fix in the Constitution not only the outline but the entire detail of the organization of the court. For these reasons, and for others perhaps that might be suggested, I trust that we shall adhere to the plan reported by the majority of the committee.

The question was put on the amendment of Mr. Goodrich, and it was declared lost.

Mr. PRINDLE—I now offer the proposition, substantially as I read it, as a substitute for the proposition before the committee.

The SECRETARY read the substitute as follows:

"There shall be a supreme court, having general jurisdiction in law and equity, subject to such appellate jurisdiction of the court of appeals as may be prescribed by law. The State shall be divided into three judicial departments, to be composed of the judicial districts now existing; the first and second districts to compose the first department; the third, fourth and fifth the second department; and the sixth, seventh and eighth the third department. There shall be in each department four justices of the supreme court, who shall have appellate jurisdiction only and shall hold the general terms, and eight justices of said court, any one of whom may hold special terms of the supreme court and circuit courts, and preside in the courts of oyer and terminer in ax county."

Mr. FULLER—I move that the committee c now rise and report progress.

The question was put on the motion of M Fuller, and it was declared lost.

Mr. COOKE—I have not attempted to occup the attention of this committee on this questio But there are some thoughts which I deem it m duty to submit for the consideration of member

Mr. E. BROOKS—As the gentleman desires t express himself with some care upon this questior I move, with his consent, that the committee ris and report progress.

The question was put on the motion of Mr. E Brooks, and it was declared carried.

Whereupon the committee rose, and the PRES IDENT resumed the chair in Convention.

Mr. C. C. DWIGHT, from the Committee of the Whole, reported that the committee hac had under consideration the report of the Committee on the Judiciary, had made some progress therein, but, not having gone through therewith, had directed their Chairman to report that fact to the Convention and ask leave to sit again.

The question was put on granting leave, and it was declared carried.

Mr. A. F. ALLEN—I move that the Convention do now adjourn.

The question was put on the motion of Mr. A. F. Allen, and it was declared carried.

So the Convention adjourned.

WEDNESDAY, December 11, 1867.

The Convention met at ten o'clock.

No clergyman was present.

The Journal of yesterday was read by the SECRETARY and approved.

The PRESIDENT announced the appointment of the following committee, under the resolution of Mr. Merritt, adopted yesterday, to confer with the committee of the common council of the city of Albany in relation to a suitable hall and accommodations for the sessions of this Convention:

Mr. BELL, Mr. MERRITT and Mr. MORRIS.

Mr. MORE presented the petition of John Sanderson and others, of Greene county, in favor of abolishing the Board of Regents of the University.

Which was referred to the Committee of the Whole.

Mr. MERRITT presented the remonstrance of the trustees and principal of the Gouverneur Wesleyan Seminary against abolishing the Board of Regents of the University.

Which took a like reference.

The PRESIDENT presented a communication from S. B. Woolworth, secretary of the Board of Regents of the University.

Which took a like reference.

The PRESIDENT presented a communication from Col. Emmons Clark, tendering the armory of the Seventh Regiment of the city of New York for the use of the Convention in case they should adjourn to the city of New York.

Which was referred to the Committee of the Whole.

Mr. ALVORD—I am instructed by the Commit-

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tee on Revision to report that they have had under consideration the resolution offered some time since by Mr. Colahan, and ask leave to be discharged from its further consideration.

Mr. VEEDER—I move to lay that subject on the table. Mr. Colahan is not present.

The question was put on the motion of Mr. Veeder, and it was declared lost.

The question then recurred on agreeing with the report of the committee, and it was declared carried.

Mr. ALVORD—The same committee have further instructed me to report that they have had under consideration the petition of Herkimer Steinburgh for a "Temperance System of Medical Theory and Practice," and ask leave to be discharged from its further consideration.

The question was put upon agreeing with the report of the committee, and it was declared carried.

Mr. MORRIS—I move the reconsideration of the vote by which the resolution of the gentleman from St. Lawrence [Mr. Merritt] was passed yesterday.

Mr. BICKFORD—I rise to a point of order, that the motion is not in order for the reason that the resolution has been acted upon.

The PRESIDENT—The Chair is not aware that the resolution has been acted upon.

Mr. ALVORD—I propose to discuss that, and under those circumstances I suppose it lies upon the table under the rule.

The PRESIDENT—The Chair understands that it does not lie on the table; that the rule applies simply to reconsideration upon the day upon which the motion is made which it is moved to reconsider. The rule will be read.

The SECRETARY then read the rule as follows:

RULE 28. A motion for reconsideration shall be in order at any time, and may be moved by any member of the Convention, but the question shall not be taken on the motion to reconsider on the same day on which the decision proposed to be reconsidered shall take place, unless by unanimous consent; and a motion to reconsider being once put and lost, shall not be renewed, nor shall any subject be a second time reconsidered without the consent of the Convention. If the motion to reconsider shall not be made on the same day or the day after that on which the decision proposed to be reconsidered was made, three days' notice of the intention to make the motion shall be given.

The PRESIDENT—The Chair holds that the motion of the gentleman from Putnam [Mr. Morris] is in order. The question is upon the motion of Mr. Morris to reconsider the vote by which the resolution of Mr. Merritt was adopted on yesterday.

Mr. ALVORD asked for the reading of the resolution.

The SECRETARY proceeded to read the resolution as follows:

Resolved, That a committee of three be appointed by the President to confer with the committee of the common council of the city of Albany in relation to a suitable hall and accommodation for the sessions of this Convention, as voluntarily tendered by the city authorities, and report as early as practicable.

Mr. ALVORD—Mr. President, a majority of the members of this Convention who are in the habit of attending promptly to the duties of the Convention, and who have been here most of the time, from the commencement of the Convention up to the present moment, decided yesterday in favor of the appointment of this committee. It seems, however, that individuals, members of this Convention, who have steadily absented themselves from the Convention, not only since the recess, but to a large degree previous to the recess, through the summer, have now come up here, some of them making their appearance for the first time in some three or four months, for the purpose of voting upon this resolution to carry this Convention away from this city to the city of New York. I trust that when the vote shall be taken upon this subject, these gentlemen will be permitted, for the first time in six or eight weeks, many of them, to record their names in the affirmative, still further hindering and delaying the operations of this Convention.

Mr. E. BROOKS—I rise to a point of order.

The PRESIDENT—The gentleman will state his point of order.

Mr. E. BROOKS—My point of order is that, under the common parliamentary law, no member of the Convention has a right to make reflections injurious to the character of any of its members.

The PRESIDENT—The point of order is well taken. The gentleman will proceed in order.

Mr. ALVORD—I have not mentioned any names. I do not desire to. I leave the remarks which I have made, and if the coat suits any one he can put it on. We are asked to reconsider this resolution for the purpose of taking the great body of the men from the interior of the State who have faithfully and diligently discharged their duties here during all the sessions of this Convention, to transfer them to the city of New York for the convenience of the members from that city who cannot possibly get up to Albany to attend to their duties. If the people in the country have come to the conclusion that it is necessary for the whole business of the State to be done in the city of New York because of the fact that the members of any constitutional or legislative body from that city cannot by any possibility get away from their ordinary business far enough to come at least as far as we do for the purpose of attending at the Capitol of the State, we might as well know it now as at any time. I say to gentlemen that there is no question in my mind but what the attempt to go to the city of New York for the purpose of obtaining a quorum will fail as signally as it has failed in this chamber. I have no doubt myself that so far as it regards the local representatives there, they will be as apt to be away from their duties in the Convention as they have been in the past; and I know most certainly that very many members of the Convention from the interior of the State cannot and will not find it to be their duty to go there for the purpose of sitting with the Convention any further. Another thing. There are six of the members of this Convention who are mem-

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bers also of the Legislature to be convened in this place. Every one knows that for the first four or six weeks of the session of the Legislature it has a short morning session in both houses, occupying hardly ever for the first six weeks over an hour of the day, so that if the Convention remains here those six gentlemen can well attend to the duties, light as they are put upon them in the Legislature, and at the same time be with the body of this Convention during a large portion of its morning session, and during the entire of its evening session; but if you put this Convention in the city of New York, the result will be that, so far as those six men are concerned, they cannot pay any attention to their duties as members of the Convention. Again, sir, we have two, at least, of the members of this Convention who have been elected to State offices. They are necessarily constantly in attendance at Albany, during the session of the Legislature. We will be deprived, therefore, of the attendance and of the counsel and aid of those gentlemen in the Convention. There are eight, sir, directly out of the body of this Convention whom we shall lose, as a matter of course, by undertaking to get away from this city. There are other gentlemen who have been elected to other positions, in the election of last fall, who could make it convenient to be present here at Albany during most of the time of the sitting of the Convention, but must necessarily be absent if it goes to the city of New York. I hold that we have proved clearly by the manner in which we have progressed for the last three weeks, that three weeks more, at the outside, of good, careful, constant consideration and attendance upon the business of the Convention, will carry us through down to the question simply of revision, and I pledge myself, so far as I am concerned—and I believe that I can pledge also the other members of the Committee on Revision—that they will at least work up to the work of the Convention, so that, in all probability, at the end of three weeks, when we shall have got through with our labors and completed our work, the Committee on Revision will be ready to report to the Convention, for their acceptance, the result of their labors. We have now twenty-one working days between this time and the seventh day of next January. We can occupy those twenty-one days, if we will forego the holidays, or even if we take the two holidays, it will leave us nineteen days, in which we can perfect our entire work.

A DELEGATE — Twenty-one days, without the holidays.

Mr. ALVORD—Leaving out the holidays there are twenty-one working days between now and the seventh day of January—the day of the meeting of the Legislature. There is no difficulty in our having this hall up to the first day of January. The people in the city of Albany are ready, anxious, and willing to give us the very best accommodations that can be had in this city, if it becomes necessary for us to hold our sessions in another hall—as good accommodations as we can get in the city of New York. The only question that troubles the minds of any members of the Convention, as I understand it, is the danger that they will not get any place to sleep, or any thing to eat in the city of Albany. In the commencement of the legislative term each year there are after one or two days comparatively few individuals in the city outside of the Legislature. When the Legislature begins to seethe and boil, toward the middle and end of its term, then like the locusts of Egypt they come up here from all portions of the State, and four, five, six, eight times the number of this Convention are here in Albany, and they seem to stay here and have abundance to eat and plenty of places to protect themselves. The great army of the lobby is here in the latter part of the session. They are not here in the beginning of the session, so that there will be an abundance of room for the members of the Convention, at least for the first six weeks, if it is necessary to stay so long; abundance of room within the limits of the city of Albany for the members of this Convention, at least for the number of the members of this Convention who ordinarily attend here, to find places to sleep, and places to eat and drink. And I wish to say—and I say it not as a threat, not for the purpose of undertaking to intimidate any one; but I do say, sir, and I say it with regret and with sorrow, that so far as it regards the opinion of the people of this State with reference to this Convention, to say the least of it, our labors do not, at the present time, as we are advised, stand very high in their favor, and my honest conviction is, that if we shall go to the city of New York with this Convention, under all the circumstances that surround us, it will be the end of any good coming out of any work that we shall have done here. We shall have put the finishing blow upon the work which we shall have undertaken to perform here, and it will fall dead at the hands of the people. I may be mistaken in regard to this, but this is my firm and honest conviction. I hold, under all these circumstances, that it is not only bad policy, but it is doing ourselves and our constituents a wrong, to move, at this late stage of our proceedings, from this city to the city of New York. Already there comes up upon the wings of the wind, aye, sir, from more than one, even this morning, from men standing high in my own county, who are present in the city of Albany, comes up this talk, "Go to the city of New York and the word will be put forth in the country that you have gone there for the purpose of helping expend still more of the people's money, and to have a good, jolly time, you, members of the Convention, because you see you can thus do. You have gone thus far to a very considerable extent by your laxity and non-attendance to the duties of the Convention, and you think you can go still further in that direction, and the people will stand it; but we tell you if you undertake to put this last load upon the people they will repudiate you and your acts."

Mr. DALY—The gentleman who has just sat down, with the bad taste which has distinguished many of his remarks in this Convention, and with something of the air of a task-master, with a lash in his hands, impugns the motives of the gentlemen who are in favor of this motion. I beg leave to say, on behalf of the gentlemen from New York, particularly of those who have not hitherto

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been present since the adjournment of the Convention, that the reason of their absence is the impossibility of being here at this particular season of the year. All persons acquainted with the business of the city of New York know that there this is the busiest period of the year, and that at no time is the sacrifice greater than it is now to attend upon the duties of this Convention. That city, with Brooklyn, embraces one-fourth of the population of the State. It sends twenty-two members, and there have rarely been since the adjournment more than two or three members from that city attending, and I undertake to say, in vindication of the gentlemen who have not attended, that it has not been from the motive imputed by the gentleman from Onondaga [Mr. Alvord], a desire to hinder and render fruitless the labors of this Convention. Their absence is attributable to the difficulty of attending here from the pressure of private affairs or of official business, and not from the motives imputed by the gentleman from Onondaga. In the course of the proceedings of this Convention we have had a great many promises, predictions and pledges from the gentleman who has just spoken, and, in my judgment, his predictions, as shown by the result, are entitled to less weight than those of any other gentleman in this Convention. I mean his statements as to how and within what time certain matters could and would be accomplished, and other things of that kind.

Mr. ALVORD—Have I not always said in that connection that if this Convention would stay here and do its duty and perform its work, it could do it? I ask the gentleman whether it has done so.

Mr. DALY—And he has said a great many other things—among them fixing a positive period within which the labors of this Convention were to be completed, thus anticipating and preparing the public mind for the time when our labors would close, and showing a want of comprehension of the nature and magnitude of the work we had to do. If the Convention does not stand very high at the present time, to use the language of the gentleman, it has been from such predictions as these. It has been from the want of practical experience, a want of knowledge of what we had to do, and the attempt to compress it within a period of time within which it was impossible to do it. If, as the gentleman says, this Convention does not stand very high in public opinion, in my judgment it would give additional confidence if it should adjourn and hold its future session in New York when in consequence of the meeting of the Legislature it is not desirable that it should continue in session here. Why should it not? What objection is there to going down to the principal city of the State? From the nature of the approaches to it, it is nearly as accessible as any other portion of the State. A number of the members who attend from the southern portion of the State find it just as difficult to get to Albany as the gentlemen living in the northern part of the State find it difficult to go to New York. And I take it, if this motion prevails, there will be found, in spite of the gentleman's predictions, a large attendance of the members of the Convention, embracing a very full attendance of the members from the city of New York, who will then be able to attend from day to-day and in sufficient numbers to secure and maintain a quorum until the labors of this Convention are completed. The gentleman says that in three weeks the labors of this Convention will be completed. I undertake to say that they will not be completed in six weeks. The judiciary article alone, in the Convention of 1846, which embraced less changes than are now required or contemplated, took nearly five weeks in discussion, with three sessions a day; and yet the gentleman tells us now in the very beginning of this inquiry that we can dispose of this and the other objects before the Convention in three weeks. What are these subjects? The public education, the public charities, the whole subject of prisons, and the question of the government of the metropolitan cities with other subjects which have not yet been touched; and we are told in the confident tone in which this gentleman has addressed the Convention from the beginning, that all this can and will be done in three weeks. Now, I make a prediction. The gentleman is chairman of the Committee on Revision and with all his activity, zeal and industry, I make the prediction that it will take nearly three weeks to discuss the report of his Committee of Revision, if we go into all the subjects before us, when they make their report. And I say, therefore, in conclusion that so far as satisfying the people of this State, so far as inspiring confidence on the part of those who now constitute the political majority of this State, the wisest thing in my judgment that this Convention could do would be to go the city of New York; and instead of producing the effect which the gentleman anticipates of impairing the labors of this Convention, it would in my judgment do more now than any thing else to secure a satisfactory completion and the ultimate adoption of the Constitution.

Mr. MILLER—If I believed, Mr. President, that this question concerned merely the personal convenience of the members of this Convention I should not arise to prolong this discussion. I presume that perhaps as large a number of gentlemen would be accommodated by the transfer of our session to New York city, as may be accommodated if we stay here. But I am of the opinion that this question reaches very much further than the personal convenience of any man, or any number of men. I think it reaches to the character and reputation of this Convention with the people of the State, and the reputation and standing of this Convention with the representatives of the people of this State that are very soon to meet in the Legislature. Now, in my opinion, there is no use in denying the fact that we have been in session very much longer than we expected, or than the people expected when we assembled. One reason is we have found that our work was very much greater than we anticipated. But, I submit, that now we understand something about it and can comprehend somewhat of its extent, we may begin to see the end, and that, with some degree of certainty, we can set a limit to our labors. And notwithstanding the leading members on this floor may disagree, I think it pretty safe to say

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that with reasonable diligence we could finish our labors in at least two or three weeks after the assembling of the Legislature. Is it wise then to transfer this Convention to New York or to any other city for that short time. Or would it be wise, even if we had to stay two or three months instead of two or three weeks? Now, in my opinion, the people, whether right or not, have this idea pretty firmly fixed in their minds, that the capital of the State is the appropriate and proper place for a State Convention to assemble to frame the Constitution of the State. They think so, and I think they are right in that opinion. And I can see nothing that we can gain by going, and nothing that we can lose by staying. It was suggested here the other day that we might be crowded out of our boarding places, driven away from the hotels by the members of the Legislature and the lobby, that come up with them. I do not think that the Convention, or the gentlemen of the Convention, have fallen so low as that. We have possession, which is nine points of the law; and I think it will be the new-comers who must seek other quarters, if any body. Of course we are to leave this hall, but we must leave it if we go anywhere else. The city of Albany can furnish another hall that will accommodate us as well, perhaps, as we can be accommodated in any other city. Nor is there any objection, as I can see, to meeting the members of the Legislature. We expect some legislation at their hands; and I think that there is a great advantage even in meeting them, as they come up from the people. They come fresh from the people, and they know their wants in relation to the very work in which we are engaged. We are framing this Constitution for the people. They are now, since the election, beginning to discuss the questions that are before us. These representatives that come up from the people will meet with us, and will tell us the people's wants; will tell us the wishes of their constituents and ours, and what, in their opinion, are the deficiencies in the present Constitution, and how we should mend it, in the particulars that may be under discussion at that time. I am anxious, too, that these representatives shall see us here, and see that we are honestly and diligently at work; and while we have made haste slowly, while our session has been protracted longer than the people anticipated, I want these men to see that we have spent the time, not in idleness, but that we have spent it in hard work and in careful deliberation. Now I propose that we stay here at our post, that we discharge our duties and perform this work well, and as quickly as we can, and do it well.

Mr. GOULD—I am sure, sir, if I know my own heart at all, I have had but one single object from the day of the assembling of this Convention until the present time. That object was to do the work which this Convention was set to do, in the most thorough and perfect manner that was possible, in the shortest possible time, and with the least expense to the people of the State. And if I supposed the work could be accomplished better, or cheaper, or more satisfactory to the people of this State by remaining in Albany than by going to New York, my voice and my vote should certainly be given for remaining in the city of Albany. But I have no kind of idea that we could conveniently remain in this city. I understand that a number of gentlemen who are members of this Convention have already received notice from the places where they are boarding, that their rooms must be speedily vacated. The gentleman says that the beginning of the sessions of the Legislature of this State is not generally attended by a very large number of strangers. I can only say that his experience is different from mine. I know that shoals almost as large as the locusts of Egypt come to Albany. I know how difficult it is to obtain board or a bed in the city of Albany when these people come here. The gentleman says we shall get in contempt with the people of this State if we go to the city of New York—that our desire for going to the city of New York will be interpreted by our constituents as a desire for the indulgence of those illicit pleasures which the city of New York affords. Sir, I am not in the slightest degree afraid that my constituency will charge any such motive upon me.

Mr. ALVORD—Do I understand the gentleman from Columbia to intimate that I made use of such language as he speaks now?

Mr. GOULD—Substantially, I did.

Mr. ALVORD—I did not at all. I had not the remotest intention to allude to any thing of that kind. The gentleman is entirely mistaken. I said they would have a jolly time.

Mr. GOULD—Then, sir, I misunderstood the gentleman. I certainly understood him to make that charge. There are some reasons why I think it is desirable for this Convention to go to the city of New York—why I suppose the business of this Convention which remains to be done could be more properly and usefully done in the city of New York. In the first place we have the report of the committee on State prisons, which, as every one knows, proposes the establishment of a State police. This is a grave question, one which ought to be intelligently decided by the members of this Convention. An opportunity of observing the workings of the police in New York, the operations of crime as they can be observed in the city of New York will be a very great assistance to every gentleman here in determining how he shall vote in relation to the propositions of this committee. Then there is the subject of education, which is one of very great and, I may say, of transcendent importance. Gentlemen will have an opportunity of seeing the workings of the educational system of New York, from the primary schools up to the free college. I have not the slightest doubt that an inspection of the educational establishments of that city will be exceedingly useful to every man here. During the recess I visited the schools of New York, and I must say that a more instructive spectacle I never witnessed. Among them was the one directly opposite to the Tombs—a school situated in the very worst part of the city—a school where the most degraded part of the population live—and I there found, among those little Irish and German boys, the children of the very poorest part of the community—children that were capable of telling the whole story of Wil-

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from the Conqueror, the whole current of English history; and they could give me all the leading traits of American history. They read with a degree of intelligence that I do not think could be equaled by the members of this Convention. I mean what I say. There was an emphasis, there was a relation of the voice and gesture to the subject in what was read that I do not think could be improved by members of this Convention; and the influence of education upon the most degraded classes of the community brought directly under the inspection of the members of this Convention, I am sure, would be exceedingly useful to them in intelligently voting upon the propositions which are brought before it by the Committee on Education. Then the subject of charities, which is one of great importance, will be elucidated in a practical manner by the observation of the great charities of New York in a way which they could not be understood by the members of this Convention in any other school within my knowledge in the State of New York. For these reasons I believe that it would be exceedingly satisfactory to the people of this State if the members of the Convention would place themselves in a position where, upon a large scale, they might observe the workings of those measures upon which they are called upon to vote here.

Mr. MERRITT—It seems the question has now assumed this shape: shall we adjourn to the city of New York, or remain in the city of Albany? There is no doubt that ample accommodations can be furnished in the city of New York for the use of this Convention. Equally good can be furnished in this city. The hall referred to in the city of New York, is large enough for the Convention. It was thought this chamber would be required a short time before the meeting of the Legislature, so that it could be put in order for the convenience of the Assembly, in which case it would be necessary to provide other accommodations for this body. Such accommodations can be furnished in this city. The Convention met in this city, pursuant to law, to perform its labor. No person can know or does know how long it will take to fully complete the work which devolved upon us. It may take two weeks after, the first of January, or it may take four or six weeks. It seems to me that the reputation of this Convention would be compromised by going away from the city of Albany, the capital of the State, where its sessions have so long been held, unless some good and substantial reasons can be given for it. Those reasons have not, in my judgment, been given. We should not be governed by mere questions of personal convenience. We are here to perform a public duty; and if that public duty can be well and successfully performed where we have met, and where the law required we should meet, and where we have thus far been well accommodated, then we should remain here, and should not go from the city of Albany. So far as my personal convenience is concerned, I could as well go to New York as remain here. I do not care a straw in that respect. But I believe the good name and reputation of the Convention would be compromised if we should leave this city and go to the city of New York. And my opposition to the motion proposed yesterday, was not out of any disrespect to the mayor or authorities of any city, but because I could think of no reason why we should accept the proposition to go to the city of New York, and being opposed to a change of location; when this vote shall be taken, I shall call for the ayes and noes, as I do now, and I hope that the issue will be met fairly and squarely on the question of removal from Albany to the city of New York.

Mr. E. BROOKS—If I could believe, sir, either with the gentleman from Onondaga [Mr. Alvord] or the gentleman from Delaware [Mr. Miller] or the gentleman from St. Lawrence, who has just taken his seat [Mr. Merritt], that our good name depended on the place where we are to close our deliberations, I might, perhaps, agree with them that one place might, perchance, have some advantage over another. But we are of age, we are at least "children of a larger growth," and we have arrived at those mature years when every man's character must depend upon his conduct in life, and it certainly can be as well displayed in one place as another. And, in my judgment, we can as well maintain a good character in the city of New York as in the city of Albany or any other place. I cannot believe, in the first place, that the people of the State of New York care one rush whether we meet here or meet in New York. They may care, and very probably do care, and we ought to care even more than the constituents whom we represent, that our deliberations should be conducted in a decent and orderly manner, and that we shall make that progress in them which becomes the members of a deliberative body. My friend from St. Lawrence [Mr. Merritt] says we are required to meet here by the law under which we were convened. The same law which convened us here gives us power to meet elsewhere if we so determine, and we have just as much right to meet in the city of New York as we have to meet in the city of Albany. But there are, in my judgment, reasons why we should come to the conclusion that this is the proper time to make the change. The keeper of the Capitol has said that it is necessary to have fifteen or twenty days to prepare the Capitol for the Legislature. Such has been the custom during times past, and, I suppose, whatever may be our right to sit in this Capitol after the 1st of January, there is no disposition to maintain that right. It is, therefore, perhaps, to be considered as a matter of justice to the Legislature, as well as a matter of convenience to ourselves, that we change our place of meeting. The law gives us the power to change and we have precedent for it. The first Convention which assembled in this State, met in the city of New York and changed its place four times before it closed its deliberations. It first assembled in the city of New York, then at White Plains, then at Poughkeepsie and finally in Kingston, where it closed its deliberations. And although there were circumstances which controlled the action of that Convention which need not control us, still, in the discharge of their duties to the public, they thought proper to make the changes I have named. Let me say, in addition, that if we adopt the resolution suggested by my friend from

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Putnam [Mr. Morris], it is to cost the State no more money than it will cost if we remain here; and it certainly will not cost the members of this Convention no more money to make this change. The hall which has been tendered is a suitable place for meeting, and it has been tendered free of expense, and every gentleman must realize that the accommodations in the city of New York are quite as ample as they are in the city of Albany. But my experience as a member of the Legislature—certainly not for recent years—but I think the observation of every gentleman who has attended the opening of the sessions of the Legislature, warrant the conclusion that it would be in some respects, an unseemly spectacle to see the members of the Convention and the members of the Legislature jostling together, the one claiming this hall and Capitol, as they have, perhaps, a right to it, and the other meeting, we do not know at present where and under what circumstances or what inconveniences. The place where it is proposed to call this Convention, if it should be the judgment of the majority of this body, is in the heart of the city of New York. It is in the immediate circle of four great libraries, if gentlemen take any interest in such subjects: the Historical Society, the Mercantile Association Library, the Astor Library and the library of the Cooper Institute. There is, therefore, every convenience and accommodation. One word more before I resume my seat, in regard to the imputations which are, from time to time, cast by gentlemen from the country who may, perhaps, be drawn to the city of New York. The gentleman from Onondaga [Mr. Alvord] has given a painful picture of what will be the comments of the people if we go from Albany to the city of New York. In the name of heaven, what do these gentlemen think the city of New York really is? It is a city of a million of people. It has its bad aspects, and, as has been said by the gentleman from Columbia [Mr. Gould], it certainly has its good aspects; and personally what I desire more than any thing else, as a member of this Convention, is that some of the delegates here will go to New York, at least to unlearn some of the prejudices which they entertain in regard to that great commercial city.

Mr. MERRITT—Before the gentleman sits down I will call his attention to the law with reference to the meeting in the city of Albany. It was pretty well discussed when we talked of going to Saratoga. It reads: "After the said Convention has met and organized, it shall have power to adjourn to and hold its meetings at any place other than the Assembly chamber, at the Capitol." I hold that means that we may adjourn to any place in the city of Albany. The law does not contemplate moving to any other place.

Mr. E. BROOKS—I hold that it is perfectly in our power to meet where we will.

Mr. MERRITT—That may be as to general principles, but not according to the law.

Mr. E. BROOKS—I hold that we are independent of the Legislature; that we are convened by the Constitution of 1846, and not by the Legislative act of 1866-7; and also that the "other place," according to a fair construction, may mean any other place—that is, town—out of the Assembly chamber in the city of Albany. This, in my judgment, is our right and our duty under the circumstances. We are to be driven away from this Capitol by the assembling of the Legislature. But, sir, when interrupted I was speaking of the prejudices entertained against the city of New York. I want these gentlemen to see that that is a great metropolis of churches, of schools, of libraries, of industrial associations, of intelligent mechanics and professional men, and that if it has its dark picture, it also has its bright side.

Mr. MERRILL moved the previous question.

The question was put on the motion of Mr. Merrill, and it was declared carried.

Mr. ALVORD demanded the ayes and noes on the adoption of the substitute.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was put on the motion of Mr. Morris to reconsider, and it was declared carried, by the following vote:

Ayes—Messrs. Ballard, Barto, Beadle, Bergen, E. Brooks, E. A. Brown, W. C. Brown, Church, Clarke, Cochran, Comstock, Cooke, Curtis, Daly, Develin, Duganne, Eddy, Endress, Evarts, Flagler, Fowler, Fuller, Garvin, Gould, Gross, Hardenburgh, Jarvis, Ketcham, Larremore, A. Lawrence, A. R. Lawrence, Ludington, Magee, Mattice, Monell, More, Morris, Opdyke, C. E. Parker, Pierrepont, President, Prosser, Robertson, Rogers, Root, A. D. Russell, L. W. Russell, Schell, Schumaker, Silvester, Sheldon, Stratton, S. Townsend, Tucker, Van Campen, Veeder—56.

Noes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Axtell, Baker, Barker, Beckwith, Bell, Bickford, Bowen, Case, Cassidy, Cheritree, Corbett, Corning, C. C. Dwight, Ferry, Folger, Francis, Goodrich, Graves, Hadley, Hale, Hammond, Hand, Harris, Hiscock, Hitchcock, Houston, Kinney, M. H. Lawrence, Lee, McDonald, Merrill, Merritt, Merwin, Miller, A. J. Parker, Potter, Prindle, Rathbun, Reynolds, Roy, Seaver, Smith, Spencer, M. I. Townsend, Wakeman, Wales, Williams—52.

Mr. MORRIS—Mr. Chairman——

The PRESIDENT—The question now recurs on the adoption of the original resolution which the Secretary will read.

Mr. BARKER—I move to lay the resolution on the table

Mr. E. BROOKS—I understand that the gentleman from Putnam [Mr. Morris] was recognized by the Chair.

The PRESIDENT—The gentleman from Putnam [Mr. Morris] was recognized by the Chair. The gentleman will make his motion if he desires.

Mr. MORRIS—I have an amendment which I desre to offer. It is to strike out all after the word "resolved" and insert as follows:

WHEREAS, It is now probable that the labors of this Convention will not be completed before this chamber will be required by the Legislature; therefore

Resolved, That this Convention hereby tenders its thanks to Colonel Clark for his offer of the Seventh Regiment armory to this Convention, and that when this Convention shall adjourn on the last day of its session during the present month,

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it do adjourn to meet at the said armory, or at such other place in the city of New York as may be secured free of expense to the State by a committee of three to be appointed by the President.

I will not discuss this amendment as the subject has been so well debated already as to leave little more to be said. I therefore move the previous question.

Mr. CHURCH—I ask the gentleman to withdraw that motion for a moment, as I wish to make an amendment.

Mr. MORRIS—I withdraw it.

Mr. CHURCH—I offer the following as a substitute for the original proposition. It is in the nature, I suppose, of a second amendment.

The PRESIDENT—It will be received as such provided it is germane to the first. The Secretary will read the amendment of the gentleman from Orleans [Mr. Church].

The SECRETARY read the amendment as follows:

Resolved, That this Convention will proceed to the completion of the article on the judiciary to the exclusion of all other business, and recommend its submission to the people for their adoption by the Legislature, and that the Convention will then adjourn subject to be re-assembled by the Legislature, if that body shall deem it wise and proper to re-assemble the Convention for the purpose of completing its business.

The PRESIDENT—The Chair must inform the gentleman from Orleans [Mr. Church] that under the recent rule this amendment cannot be received, it not being germane to the amendment of the gentleman from Putnam [Mr. Morris].

Mr. ALVORD—I move that the resolution of the gentleman from Putnam be referred to the Committee on Revision. [Laughter.]

The PRESIDENT—The Chair must inform the gentleman from Onondaga that the gentleman from Putnam yielded the floor temporarily to the gentleman from Orleans [Mr. Church] to offer his amendment, the previous question having been already demanded.

Mr. ALVORD—I rise to a point of order.

The PRESIDENT—The gentleman will state his point of order.

Mr. ALVORD—It is that the gentleman from Putnam [Mr. Morris] cannot yield the floor for the purpose of having an amendment offered, and then resume the floor after another member has obtained it.

Mr. CHURCH—It was understood, I suppose, that I was to renew my motion for the previous question.

The PRESIDENT—The gentleman did not renew the motion, and the Chair must rule that notwithstanding a contrary practice according to strict parliamentary law, the point of order raised by the gentleman from Onondaga [Mr. Alvord] is well taken.

Mr. ALVORD—I now move that the whole subject-matter be laid upon the table, and upon that I demand the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered, and the motion to lay on the table was declared lost by the following vote:

Ayes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Axtell, Baker, Barker, Beckwith, Bell, Bickford, Bowen, E. A. Brown, Case, Cassidy, Cheritree, Corbett, Corning, C. C. Dwight, Ferry, Folger, Francis, Goodrich, Graves, Hadley, Hale, Hammond, Hand, Harris, Hiscock, Hitchcock, Houston, Kinney, M. H. Lawrence, Lee, McDonald, Merrill, Merritt, Merwin, Miller, A. J. Parker, Potter, Prindle, Rathbun, Reynolds, Roy, Seaver, Smith, M. I. Townsend, Wakeman, Wales, Williams—52.

Noes—Messrs. Ballard, Barto, Beadle, Bergen, E. Brooks, W. C. Brown, Church, Clarke, Cochran, Comstock, Cooke, Curtis, Daly, Develin, Duganne, Eddy, Endress, Evarts, Flagler, Fowler, Fuller, Garvin, Gould, Gross, Hardenburgh, Jarvis, Ketcham, Larremore, A. Lawrence, A. R. Lawrence, Ludington, Magee, Mattice, Monell, More, Morris, Opdyke, C. E. Parker, Pierrepont, President, Prosser, Robertson, Rogers, Root, A. D. Russell, L. W. Russell, Schell, Schumaker, Silvester, Sheldon, Spencer, Stratton, S. Townsend, Tucker, Van Campen, Veeder—56.

Mr. MORRIS—I now move the previous question upon the amendment offered by myself.

Mr. ALVORD—Upon that I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered, and the previous question was ordered by the following vote:

Ayes—Messrs. Ballard, Barto, Beadle, Bergen, E. Brooks, E. A. Brown, W. C. Brown, Church, Clarke, Cochran, Comstock, Cooke, Curtis, Daly, Develin, Eddy, Endress, Evarts, Flagler, Fowler, Francis, Fuller, Garvin, Gould, Gross, Hardenburgh, Jarvis, Ketcham, Larremore, A. Lawrence, A. R. Lawrence, Ludington, Magee, Mattice, Monell, More, Morris, Opdyke, C. E. Parker, Pierrepont, President, Prosser, Robertson, Rogers, Root, A. D. Russell, L. W. Russell, Schell, Schumaker, Silvester, Sheldon, Spencer, S. Townsend, Tucker, Van Campen, Veeder—56.

Noes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Axtell, Baker, Barker, Beckwith, Bell, Bickford, Bowen, Case, Cassidy, Cheritree, Corbett, Corning, Duganne, C. C. Dwight, Ferry, Folger, Goodrich, Graves, Hadley, Hale, Hammond, Hand, Harris, Hiscock, Hitchcock, Houston, Kinney, M. H. Lawrence, Lee, McDonald, Merrill, Merritt, Merwin, Miller, A. J. Parker, Potter, Prindle, Rathbun, Reynolds, Roy, Seaver, Smith, Stratton, M. I. Townsend, Wakeman, Wales, Williams—52.

Mr. ALVORD—I move that this Convention do now adjourn, and upon that I call for the ayes and noes.

Mr. VEEDER—I rise to a point of order.

The PRESIDENT—The gentleman will state his point of order.

Mr. VEEDER—It is that while we are under the operation of the previous question, no other motion or business can intervene.

The PRESIDENT—The Chair decides that under the rule adopted by the Convention, a motion for adjournment takes precedence.

A sufficient number seconding the call, the ayes and noes were ordered, and the motion to adjourn was lost by the following vote:

Ayes—Messrs. A. F. Allen, C. L. Allen, N. M.

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Allen, Alvord, Andrews, Axtell, Baker, Barker, Beckwith, Case, Cassidy, Chemtree, Corbett, Corning, C. C. Dwight, Ferry, Folger, Francis, Goodrich, Graves, Hadley, Hale, Hammond, Hand, Harris, Hiscock, Hitchcock, Houston, M. H. Lawrence, Lee, McDonald, Merrill, Merritt, Merwin, A. J. Parker, Potter, Rathbun, Roy, Seaver, Smith, M. I. Townsend, Wales, Williams—43.

Noes—Messrs. Ballard, Barto, Beadle, Bell, Bergen, Bickford, Bowen, E. Brooks, E. A. Brown, W. C. Brown, Church, Clarke, Cochran, Comstock, Cooke, Curtis, Daly, Develin, Duganne, Eddy, Endress, Evarts, Flagler, Fowler, Fuller, Garvin, Gould, Gross, Hardenburgh, Jarvis, Ketcham, Kinney, Larremore, A. Lawrence, A. R. Lawrence, Ludington, Magee, Mattice, Monell, More, Morris, Opdyke, C. E. Parker, Pierrepont, President, Prindle, Prosser, Reynolds, Robertson, Rogers, Root, A. D. Russell, L. W. Russell, Schell, Schumaker, Silvester, Sheldon, Spencer, Stratton, S. Townsend, Tucker, Van Campen, Veeder, Wakeman—64.

Mr. ALVORD—I move to postpone this whole matter indefinitely.

The PRESIDENT—The Chair informs the gentleman from Onondaga [Mr. Alvord] that under the rules a motion for the previous question takes precedence.

Mr. ALVORD—I beg most respectfully to appeal from the decision of the Chair, and upon that I call for the ayes and noes.

The PRESIDENT—The decision of the Chair is based upon the provision contained in chapter 9 of the rules, which the Secretary will please read.

The SECRETARY read from chapter 9, rule 29, as follows:

"When a question shall be under consideration no motion shall be received except as herein specified; and motions shall have precedence in the order stated, viz.: First, for an adjournment; second, for a recess; third, a call of the Convention; fourth, for the previous question; fifth, to lay on the table; sixth, to postpone indefinitely; seventh, to postpone to a day certain; eighth, to commit to a Committee of the Whole; ninth, to commit to a standing committee."

Mr. S. TOWNSEND—I suggest to the gentleman from Onondaga [Mr. Alvord] that he had better, after the explanation of the Chair, withdraw that motion. [Laughter.]

A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY proceeded to call the roll.

Mr. BARKER—Is it in order to make an inquiry of the presiding officer?

The PRESIDENT—It is not during a division.

Mr. BARKER—I simply wish to inquire how my name is recorded as voting upon this question?

The SECRETARY—It is recorded in the affirmative.

Mr. BARKER—That is in accordance with my vote. [Laughter.]

The SECRETARY announced the vote as follows:

Ayes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Axtell, Baker, Ballard, Barker, Barto, Beadle, Bell, Bergen, Bickford, Bowen, E. Brooks, E. A. Brown, W. C. Brown, Case, Cassidy, Champlain, Cheritree, Church, Clarke, Cochran, Comstock, Cooke, Corbett, Corning, Curtis, Daly, Develin, Duganne, C. C. Dwight, Eddy, Endress, Evarts, Ferry, Flagler, Folger, Fowler, Francis, Fuller, Garvin, Goodrich, Gould, Graves, Gross, Hadley, Hale, Hammond, Hand, Hardenburgh, Harris, Hiscock, Hitchcock, Houston, Jarvis, Ketcham, Kinney, Larremore, A. Lawrence, A. R. Lawrence, M. H. Lawrence, Lee, Ludington, Magee, Mattice, McDonald, Merrill, Merritt, Merwin, Miller, Monell, More, Morris, Opdyke, A. J. Parker, C. E. Parker, Pierrepont, Potter, President, Prindle, Prosser, Rathbun, Reynolds, Robertson, Rogers, Root, Roy, A. D. Russell, L. W. Russell, Schell, Schumaker, Seaver, Seymour, Silvester, Smith, Spencer, Stratton, M. I. Townsend, S. Townsend, Tucker, Van Campen, Veeder, Wakeman, Wales, Williams—108.

So the decision of the Chair was unanimously sustained.

Mr. FOLGER—I move that the Convention do now adjourn, and upon that I demand the ayes and noes.

Mr. ROGERS—I move the previous question. [Laughter.]

A sufficient number seconding the call the ayes and noes were ordered.

The SECRETARY proceeded to call the roll.

The name of Mr. Seaver was called.

Mr. SEAVER—I wish to be excused from voting.

The PRESIDENT—The gentleman will state his reasons.

Mr. SEAVER—I ordinarily feel disposed to proceed with our business with all proper dispatch, but not desiring to detain gentlemen here whose duties require their attendance at home every night, I feel called upon to vote for an adjournment, if compelled to vote at all, but I hope the Convention will excuse me from voting.

[Several delegates inquired of the President how they were recorded as voting upon the question, and many of them expressed a desire to change their votes.]

The PRESIDENT—Gentlemen seem to have been so inattentive to the announcement of their votes the Secretary will again call the roll.

Mr. SEAVER—I rise to a question of privilege. I asked to be excused from voting, and no count has been taken upon that question.

The PRESIDENT—The gentleman did vote, as understood by the Chair and by the Secretary.

Mr. SEAVER—I did not vote. I asked to be excused from voting.

The PRESIDENT—The question then is on excusing the gentleman from Franklin [Mr. Seaver] from voting.

Mr. FOLGER—Upon that I call for the ayes and noes.

Mr. CHURCH—I rise to a point of order, that it is not in order to call for the ayes and noes while the ayes and noes are being taken.

The PRESIDENT—It is not in order; the point of order is well taken.

Mr. ALVORD—From that decision of the Chair I beg leave respectfully to appeal.

The PRESIDENT—The question is, shall the decision of the Chair be sustained?

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Mr. FOLGER—I move to lay the appeal on the table.

The question was put on the motion of Mr. Folger, which was declared carried.

Mr. DUGANNE—I move that this Convention do now adjourn.

Mr. E. BROOKS—I rise to a question of order—

The PRESIDENT—The Chair anticipates the point of order raised by the gentleman from Richmond [Mr. E. Brooks]. A motion to adjourn cannot be entertained while a division by ayes and noes is being taken.

Mr. SEAVER—I rise to a point of order, that the question of appeal from the decision of the Chair having been laid on the table, it carries the whole subject with it.

The PRESIDENT—The Chair rules that the point of order is not well taken. The Secretary will now read the list of delegates, in order that gentlemen may understand how they have voted.

[The SECRETARY read the list of delegates, and several votes were changed from the negative to the affirmative, and others from the affirmative to the negative. Before the vote was announced the hour of twelve o'clock arrived.]

The PRESIDENT—The hour of twelve o'clock having arrived, the Convention will proceed to the consideration of the special order.

Mr. VEEDER—I rise to a point of order.

The PRESIDENT—The gentleman will state his point of order.

Mr. VEEDER—It is that we are now voting upon a motion to adjourn, which is always in order, and that that motion should be decided before we do any thing else.

The PRESIDENT—The point of order is well taken.

Mr. VEEDER—I move that the roll of delegates be called again on this motion to adjourn.

The PRESIDENT—That motion is not in order.

Mr. S. TOWNSEND—I rise to a question of order.

The PRESIDENT—The gentleman will state his question of order.

Mr. S. TOWNSEND—My point of order is that we have carried this matter about far enough. [Laughter.]

The PRESIDENT—The Chair would state that that is a question of propriety for the consideration of delegates. [Laughter].

Mr. S. TOWNSEND—But we might go on all day in this way. [Laughter.]

The PRESIDENT—The Chair would state to the gentleman that it is in the power of the Convention to go on for several days in this way if it pleases. [Laughter.]

Mr. S. TOWNSEND—Well, sir, I shall enter my protest against it. [Laughter].

The SECRETARY announced the vote on the motion to adjourn as follows:

Ayes—Messrs. Baker, Ballard, Barto, Bergen, E. Brooks, W. C. Brown, Cassidy, Cheritree, Church, Clarke, Comstock, Curtis, Daly, Develin, Duganne, Endress, Fowler, Garvin, Goodrich, Gross, Hardenburgh, Jarvis, Ketcham, Larremore, A. R. Lawrence, Lee, Monell, More, Morris, Opdyke, Rathbun, Robertson, Rogers, Roy, A. D. Russell, L. W. Russell, Schell, Schumaker, Silvester, M. I. Townsend, Tucker, Van Campen Veeder—43.

Noes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Axtell, Barker, Beadle, Beckwith, Bell, Bickford, Bowen, E. A. Brown, Case, Cochran, Cooke, Corbett, Corning, C. C. Dwight, Eddy, Evarts, Ferry, Flagler, Folger, Francis, Fuller, Gould, Graves, Hadley, Hale, Hammond, Hand, Harris, Hiscock, Hitchcock, Houston, Kinney, Krum, A. Lawrence, M. H. Lawrence, Ludington, Magee, Mattice, McDonald, Merrill, Merritt, Merwin, Miller, A. J. Parker, C. E. Parker, Pierrepont, Potter, President, Prindle, Prosser, Reynolds, Root, Seaver Sheldon, Smith, Spencer, Stratton, S. Townsend, Wakeman, Wales, Williams—66.

So the motion was lost.

Mr. SILVESTER—I move to lay the special order on the table, and upon that motion I call for the ayes and noes.

The PRESIDENT—That can be done only by a two-thirds vote.

Mr. VEEDER—I rise to a point of order.

The PRESIDENT—The gentleman will state his point of order.

Mr. VEEDER—The special order for to-day was at twelve o'clock. That hour having passed, it ceases to be a special order, and proceedings revert to the general order of business.

The PRESIDENT—The Chair rules that the point of order is not well taken.

Mr. E. BROOKS—I rise to a point of order.

The PRESIDENT—The gentleman will state his point of order.

Mr. E. BROOKS—With great respect I differ with the Chair, and appeal from his decision, when he says that it requires a two-thirds vote to lay the special order on the table. My ground for the appeal will be found in chapter 9 of the rules, in the twenty-third rule, which says:

"When a question shall be under consideration, no motion shall be received except as herein specified, and motions shall have precedence in the order specified, for an adjournment, for a recess, for a call of the Convention, to lay on the table, to postpone indefinitely, and to postpone to a day certain."

My point is, that the motion to postpone to a day certain, that is, to this day at twelve o'clock, is taken precedence of by a motion to lay on the table. I think, therefore, that the majority may control its own business, and vote to lay on the table.

The PRESDIENT—The Chair assigns as the reason for his decision, rule 18, which the Secretary will read.

Mr. ALVORD—I was about to read it myself in my place.

The PRESIDENT—The gentleman may read it in his place if he chooses.

Mr. ALVORD—(Reading):

"Any particular report or other matter on the general orders, may be a special order for any particular day, or from day to day with the assent of two-thirds of the members voting, and no special order shall be postponed or rescinded except by a similar vote."

The PRESIDENT—The Chair rules that a

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motion to lay on the table, if it prevails, is a virtual postponement.

Mr. ALVORD—I have the floor. Under the approval of the gentleman from Richmond [Mr E. Brooks] I desire to say, in support of the decision taken by the Chair, that it has been the universal parliamentary rule, in the entire history of this State, that no special order can be in any way got rid of except by a two-thirds vote. Both houses have held that there was no distinction between postponing and laying on the table, because laying on the table was postponing. For that reason, I trust there will be no sort of question in this controversy, of sustaining the Chair in an eminently correct parliamentary decision.

The PRESIDENT—The question is, shall the decision of the Chair stand as the judgment of this Convention?

Mr. CHURCH—Is this question debatable?

The PRESIDENT—It is.

Mr. CHURCH—So far as I am concerned, I am disinclined to vote against the decision of the Chair, even though it was contrary to my own judgment. But I must differ with my friend from Onondaga [Mr. Alvord] in relation to the rule. The rule which we have adopted, in the first place, requires that a special order shall not be postponed or rescinded without a vote of two-thirds. Now the simple question is whether a motion to lay a special order upon the table is a postponement. And by looking to the rule which the gentleman from Richmond [Mr. E. Brooks] read, it will be seen that a postponement, or a motion to postpone, is either a motion to postpone indefinitely or a motion to postpone to a day certain. These are the only two modes to postpone a subject—indefinitely or to a day certain. There is no other motion to postpone. And by the rule which was read by the gentleman from Richmond [Mr. E. Brooks] a motion to lay on the table is distingnished from and has precedence over a motion to postpone at all. Therefore, it seems to me to be a clear proposition that a motion to lay on the table is not, within the meaning of the rules we have adopted, a motion to postpone. It is a matter in which I feel no interest, except upon the merits of the question. I am clearly of the opinion that this is not a question requiring a two-thirds vote.

Mr. FOLGER—With due deference to the superior parliamentary knowledge of the gentleman from Orleans [Mr. Church] and the gentleman from Richmond [Mr. E. Brooks], I must differ from them and agree entirely with the Chair. It is quite certain that in this matter you cannot do indirectly what you may not do directly. Now each of these gentlemen admits that you cannot by a direct motion postpone a special order. But can the rules be so evaded as to indirectly arrive at a result which the mover admits he cannot reach directly? He admits he cannot, without a two-thirds vote, secure a motion to postpone either indefinitely or to a day certain.

Mr. CHURCH—Will the gentleman allow me? The gentleman says a legislative body cannot do indirectly what it cannot do directly. I ask him whether this morning this body did not by indirection postpone taking the question upon a resolution for about two hours, which resulted in throwing it over the day?

Mr. FOLGER—This body has not by indirection postponed it. It has come to a vote upon a direct question *which was in order* under the rules every time. There is no indirection at all. They went directly to the question, on which they voted and arrived at a direct result. In the proceedings this morning there was no standing rule in the way requiring a two-thirds vote. But here is a different thing. Here is a standing rule which demands a two-thirds vote to postpone a special order. If this special order is laid upon the table by this motion, I appeal to the common sense of any gentleman who hears me, whether it is not a postponement? No matter for how long, whether for an hour, for a day, or for a week. It is a postponement. Can, then, gentlemen who say that they cannot directly postpone without a two-thirds vote, claim with any show of reason that they can move to lay upon the table and by a bare majority thus postpone? My experience has been, that a motion to lay upon the table a special order has been held to require a two-thirds vote, where there has been in existence a rule like ours. I never knew it to prevail otherwise but once, and that was the day before Thanksgiving, in this body, when it prevailed by the unanimous consent of this house, and if the point of order now raised had been raised then, it would have been sustained by the person then in the chair.

Mr. SILVESTER—I do not pretend to have any knowledge of parliamentary law, and I have no intention of appealing from the decision of the Chair, but it seems to me the rules plainly recognize a distinction, notwithstanding all that the gentleman from Ontario [Mr. Folger] may say, between a motion to lay upon the table and a motion to postpone indefinitely, and a motion to postpone to a day certain, because they class them in three different orders. In chapter 9, No. 5, in the order of precedence, is to lay on the table; No. 6, to postpone indefinitely, and No. 7 to postpone to a day certain. This certainly, in my opinion, recognizes a distinction between the three kinds of postponement, because they are placed in separate divisions in the same rule.

Mr. MERRILL—I move the previous question.

The question was put on the motion of Mr. Merrill, and it was declared carried.

The PRESIDENT put the question on sustaining the decision of the Chair, and, on a division, it was declared sustained, by a vote of 70 to 10.

The question recurred on the motion of Mr. Silvester to lay the special order upon the table.

Mr. SILVESTER—On the motion to lay upon the table, I call for the ayes and noes.

Mr. SCHELL—I move that the Convention do now adjourn. On that I ask the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was put on the motion of Mr. Schell, and it was declared lost by the following vote:

Ayes—Messrs. Ballard, Barto, Bergen, E. Brooks, Cassidy, Church, Clarke, Cochran, Comstock, Daly, Develin, Endress, Garvin, Gross, Jarvis, Ketcham, Larremore, A. R. Lawrence,

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Ingee, Mattice, Monell, Morris, Pierrepont, Robertson, Rogers, A. D. Russell, Schell, Schumaker, Silvester, Tucker, Veeder—31.

Noes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Axtell, Baker, Barker, Beadle, Beckwith, Bell, Bickford, Bowen, E. A. Brown, W. C. Brown, Case, Cheritree, Cooke, Corbett, Corning, Curtis, Duganne, C. C. Dwight, Eddy, Ferry, Flagler, Folger, Fowler, Francis, Fuller, Goodrich, Gould, Graves, Hadley, Hale, Hammond, Hand, Harris, Hiscock, Hitchcock, Houston, Kinney, Krum, A. Lawrence, M. H. Lawrence, Lee, Ludington, McDonald, Merrill, Merritt, Merwin, Miller, A. J. Parker, C. E. Parker, Potter, President, Prindle, Prosser, Rathbun, Reynolds, Root, Roy, L. W. Russell, Seaver, Sheldon, Smith, Spencer, Stratton, M. I. Townsend, S. Townsend, Van Campen, Wakeman, Wales, Williams—74.

Mr. VEEDER—I rise to a point of order, that the previous question having been ordered before the resolution of the gentleman in reference to the adjournment of this Convention, and that, being under the operation of the previous question, no business can intervene unless it be a motion to adjourn. We cannot take up the special order until we dispose of that motion.

The PRESIDENT—In relation to what motion is the gentleman speaking?

Mr. VEEDER—In relation to the motion of Mr. Morris, of Putnam, in reference to the adjournment of this Convention to the city of New York. Upon that resolution the previous question has been ordered. The motion was subsequently made to adjourn. I raised the question that, we being under the operation of the previous question, no business could intervene. The Chair decided that the motion to adjourn was in order and not beyond that. Now I raise the point of order that we cannot go into the special order, nor can we entertain a motion to lay the special order of business on the table.

The PRESIDENT—The Chair rules that the objection to the decision of the Chair should have been taken at the time; that other business intervening, the objection comes too late. Therefore, it does not assign the reason for its decision.

Mr. VEEDER—I desire to explain. The Chair does not understand my point. I do not raise my objection to the decision of the Chair at that time, which was simply upon the motion of the gentleman from Onondaga [Mr. Alvord], which was a motion to adjourn. But I understand the Chair now to have announced a certain special order upon which a motion has been made to lay that special order upon the table. My point of order is upon that question, that the Chair cannot announce a special order, nor can a motion to lay a special order be made when the previous question has been ordered upon a resolution pending before the house. We must first dispose of that resolution, upon which the previous question has been ordered.

The PRESIDENT—The Chair rules that the special order would override any preceding order of business, and it must take effect at twelve o'clock. The effect would be that when the special order is disposed of, the question is resumed as when the Convention left it.

Mr. E. BROOKS—I move to postpone the special order, which is the report of the Committee on the Powers and Duties of the Legislature, until the report of the Judiciary Committee shall have been disposed of.

Mr. ALVORD—On that I call the ayes and noes.

The PRESIDENT—The Chair would inform the gentleman from Richmond [Mr. E. Brooks] that the pending question is that on the motion of the gentleman from Columbia [Mr. Silvester], to lay the special order on the table, which takes precedence, under the rule of the Convention.

Mr. SILVESTER—On that I call the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY proceeded with the call, when the motion was declared lost by the following vote:

Ayes—Messrs. Ballard, Barto, Bergen, E. Brooks, E. A. Brown, W. C. Brown, Church, Clarke, Cochran, Comstock, Cooke, Daly, Develin, Evarts, Flagler, Fuller, Garvin, Gould, Gross, Jarvis, Ketcham, Larremore, A. Lawrence, A. R. Lawrence, Mattice, Monell, Morris, Opdyke, C. E. Parker, Pierrepont, Prosser, Robertson, A. D. Russell, Schell, Schumaker, Silvester, Sheldon, S. Townsend, Tucker, Veeder, Wakeman—41.

Noes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Axtell, Baker, Barker, Beadle, Beckwith, Bell, Bickford, Bowen, Case, Cheritree, Corbett, Corning, Curtis, Duganne, C. C. Dwight, Eddy, Ferry, Folger, Goodrich, Graves, Hadley, Hale, Hammond, Hand, Harris, Hiscock, Hitchcock, Houston, Kinney, Krum, M. H. Lawrence, Lee, Ludington, Magee, McDonald, Merrill, Merritt, Merwin, Miller, A. J. Parker, Potter, President, Prindle, Reynolds, Roy, L. W. Russell, Seaver, Smith, Spencer, Stratton, M. I. Townsend, Van Campen, Wales, Williams—59.

Mr. E. BROOKS—A great many gentlemen in this Convention have said that one reason why our business is so much retarded is that we jump from one thing to another and leave the previous order unfinished. Therefore, I move you, to test the sincerity of gentlemen, that the special order be postponed until the report of the Judiciary Committee be disposed of. On that motion I ask the ayes and noes.

Mr. FOLGER—I think it is very evident to the Convention that very little business can be done this day with any profit, owing to the state of mind in which we have placed ourselves. I therefore move that this Convention do now adjourn.

The question was put on the motion of Mr. Folger, and, on a division, the motion was declared carried by a vote of 61 to 36.

So the Convention adjourned.

THURSDAY, December 12, 1867

The Convention met at ten o'clock, A. M.

No clergyman was present.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. VEEDER—I notice that the Secretary has omitted the question that was raised when the

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Chair announced the special order. When the motion was made to lay that special order on the table I called the attention of the Chair to the fact that we were then under consideration of a motion to adjourn. The Chair will remember that the members were changing their votes from one way to the other. The Chair then decided that that business would not be taken up until the motion to adjourn was disposed of. It subsequently was disposed of, and then the special order was taken up.

The PRESIDENT—The Chair believes the gentleman to state the fact correctly. The Journal will be amended in that particular.

Mr. BROOKS—I desire to have the Journal amended so as to record the facts in the proceedings of yesterday. I do not wish to appear upon the Journal as appealing from the decision of the Chair without giving a reason for that appeal. I desire, therefore, that the reason stated by me may be entered upon the Journal: that the appeal was made upon the ground that the motion to lay upon the table was an independent motion, and took precedence of the motion then pending.

Mr. ALVORD—I would ask the gentleman from Richmond [Mr. E. Brooks], and the Chair, and the Convention, whether ever in the history of legislation in this State, a request, such as the gentleman has made, has been complied with? Never, in my experience, has the reason stated by any one who appealed from the decision of the Chair, been spread upon and made a part of the Journal.

The PRESIDENT—The Chair is not aware of any precedent.

Mr. E. BROOKS—In the first place, we are required to keep a journal, and I suppose the object of a journal is to report the precise facts of the case. I made a motion and I gave a reason for it very briefly. In the order of the proceedings yesterday very many of them appeared merely factious, and showing a disposition on the part of the minority to override the majority; and it seems to me that the fact of giving a reason for appeal is a proper subject for entering upon the Journal. If it is a question of precedent I can show the gentleman plenty of them in favor of the motion I have made. We are required to keep a journal, which journal is supposed to record the precise facts in the case. That is all I ask in making the amendment to the Journal.

Mr. ALVORD—It would seem to me as proper, in case of a permission of this kind, that the remarks that were made by the Chair, and by others who undertook to sustain the Chair in giving the reasons why the Chair made the decision, should be spread upon the Journal, as that the reasons of the individual who made the first motion for an appeal should be entered. In other words, the Journal, which is none other than it was intended to be, simply a transcript or synopsis, would be be an exact and full recital of the entire of the business of the Convention. There can be no limit to any thing of this kind, because if the gentleman from Richmond [Mr. E. Brooks] has a right to have stated upon the Journal what he has said to strengthen the position he has taken in appealing from the decision of the Chair, it is no more than right that the Chair and those who sustained the Chair should h the right to spread their reasons also upon Journal, so that they shall go together—the to neutralize, if possible, the other. I trust the fore, that we shall not, without precedent ir history of legislation in this State, undertake make our Journal a transcript of debates in t Convention.

Mr. E. BROOKS—If the gentleman will allow the thing to be corrected according to facts, I think he and I know enough of parl mentary law to know that a motion may be ma which will put the facts upon the Journal of day instead of yesterday. I therefore move amend the Journal so that it shall read:

"Mr. E. Brooks took an appeal upon the grou that the motion to lay upon the table was an dependent motion and took precedence of t special order, which was to postpone to a d certain."

The PRESIDENT—The Chair believes that be a fact, and rules that any matter by way reason for a motion is in order to be entered up the Journal, but that debate or discussion up the motion is not proper to be put upon t Journal. The Chair rules that the motion amend the Journal is in order.

Mr. M. I. TOWNSEND—I would not thro any obstruction in the way of the gentl man from Richmond [Mr. E. Brooks] settin himself right; but I do deem that, as the Co vention has provided a perpetual record of ever thing that is said in the Convention, of ever word and reason that is given, it is hardly nece sary to make a record of the remarks of gentle men upon two different books. We have pr vided for the printing of the debates, and in those debates every word which the gentlema uttered will go in the exact form in which h uttered it, so that the gentleman will stand righ before the State upon the record which we pr vide and pay for at the expense of the State. does seem to me that it can hardly be necessar that remarks should be printed upon two record If we had no other record than this formal on kept by the clerk there might be some objec in the motion made by the gentleman; but I d not see any object in thus adding to the Journa kept by the Clerk. For that reason, I am, for one opposed to the motion.

Mr. ALVORD—I would ask of the Chai whether it is in order now to move to lay th motion of the gentleman from Richmond [Mr. E Brooks], to amend the Journal, upon the table?

The PRESIDENT—Such motion is in order.

Mr. ALVORD—I move to lay that motion o the table.

Mr. ROGERS—I demand the ayes and noes o that motion.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on the motion of Mr. Alvord, and it was declared lost by the following vote:

Ayes—Messrs. A. F. Allen, N. M. Allen, Alvord, Andrews, Armstrong, Axtell, Baker, Beckwith, Case, Corbett, Corning, Curtis, C. C. Dwight, Folger, Francis, Gould, Graves, Hadley, Hale, Hammond, Hand, Harris, Hiscock, Hitchcock,

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Houston, Landon, M. H. Lawrence, Lee, Merrill, Miller, Rathbun, Smith, M. I. Townsend, Wales, Williams—35

Noes—Messrs. Ballard, Barker, Barnard, Barto, Beadle, Bergen, Bickford, Bowen, E. Brooks, E. A. Brown, W. C. Brown, Burrill, Carpenter, Cassidy, Church, Clarke, Cochran, Comstock, Cooke, Daly, Develin, Ely, Endress, Evarts, Ferry, Flagler, Fowler, Fuller, Garvin, Grant, Gross, Jarvis, Ketcham, Kinney, Krum, A. Lawrence, A. R. Lawrence, Loew, Lowrey, Ludington, Magee, Mattice, McDonald, Merritt, Merwin, Monell, More, Morris, Opdyke, A. J. Parker, O. E. Parker, Pierrepont, President, Prosser, Reynolds, Robertson, Rogers, Rolfe, Roy, A. D. Russell, L. W. Russell, Schell, Schumaker, Seaver, Silvester, Sheldon, Spencer, Stratton, Tappen, S. Townsend, Tucker, Van Campen, Veeder, Wakeman, Young —75.

The question was put on the motion of Mr. E. Brooks, and it was declared carried.

Mr. ROBERTSON—I desire to suggest an amendment to the Journal in reference to the statement of the decision of the Chair, so called, when the motion to lay over the special order of business was made yesterday. I desire to have the phrase changed so as to intimate that it was an expression simply of opinion from the Chair, because at that time there was nothing before the Convention, which required deciding, and necessarily there could not be a decision until after the vote was taken on the motion to lay over. I was prepared myself to make a suggestion at the time, but considered it premature to make any suggestion in regard to that question of order until the crisis arose for the purpose of determining that question, to wit: when the Chair should pronounce whether or not the motion to lay on the table was carried by a proper number of votes. I, therefore, propose to amend the minutes by inserting "expressed an opinion" in regard to the question of order as to the motion to lay the special order of business on the table, from which expression an appeal was taken I do not wish to be precluded, in case that question should come up, from the opportunity of being heard on the question whether the decision of the Chair or the decision of the house was proper in reference to the number of votes necessary to carry that question. If the Clerk will read that part of the Journal which refers to the decision upon the propriety of the motion for laying the question on the table, I will then suggest the amendment.

The SECRETARY proceeded to read that portion of the Journal referred to.

Mr. ROBERTSON—I move to insert "expressed an opinion" instead of "decided."

Mr. C. C. DWIGHT—It would be gratifying to members of the Convention to have the Chair state whether the Chair did, upon that occasion, decide the question or merely express an opinion.

The PRESIDENT—The Chair intended it to be a positive decision. It did decide that the motion to lay on the table would require a vote of two-thirds, but did not intend to preclude any one from questioning any decision on the final vote being taken.

Mr. ROBERTSON—I would respectfully ask the Chair whether or not, according to parliamentary usage, a technical decision can be made where there is no matter before the house for its decision, and whether we are precluded, upon the question being taken upon the motion to lay on the table, from raising the question whether a two-thirds majority is necessary to carry the vote?

The PRESIDENT—The Chair did not seek to preclude any gentleman from raising a question; on the contrary, the decision was based upon inquiry made. The Chair simply stated the rule of the Convention applicable to the motion.

Mr. DEVELIN—I would like the Secretary to read that portion of the Journal again.

The SECRETARY again read that portion of the Journal referred to.

Mr. DEVELIN—It seems to me that the suggestion made by my colleague from New York [Mr. Robertson] is correct. The President, according to the Journal, made a decision when there was no question before the Convention. Nobody raised any question, so far as the Journal shows. Nobody raised the question as to how many votes were required to lay that question on the table; and it seems to have been a mere expression of opinion on the President, and that the decision of that question should not have been made until after the vote had been taken and counted. Then was the time to make the decision.

The PRESIDENT—A motion had been made to lay the special order upon the table. The Chair simply stated the rule of the Convention applicable to that motion.

Mr. DEVELIN—The question never arose as to how many votes were required to lay the special order on the table at that part of the proceeding, according to the minutes of the Journal; but the President voluntarily expressed an opinion that it required a two-thirds vote to lay the special order on the table.

The PRESIDENT—The Chair has no distinct recollection; but it is informed by the Secretary that the question was asked.

Mr. DEVELIN—We are now talking, not about the recollection of the President, or the recollection of the Secretary, but about the record, which is to be printed and remain as a precedent, and I am prepared to discuss that question by and by whenever it comes up again as to the correctness of the decision of the President on the question of laying the special order on the table; and therefore I do not wish to be precluded by the record that the President decided that it required a two-thirds vote when there was no question before the Convention for a decision.

Mr. MERRITT—The question was raised by the gentleman from Richmond [Mr. E. Brooks].

Mr. DEVELIN—It does not appear on the record that the question was raised by any body. I am talking about the record, not about the recollection of any gentleman. I am speaking about the record of the Convention. That question as to how many votes were required to lay the special order on the table, did not come up according to the record, and it could not have come up in any way until the vote had been taken, and when the vote had been taken and announced.

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Then was the time for the President to decide whether or not the special order was laid upon the table, and then to say that it required a two-thirds vote, and that the motion was lost. But according to the record we have here, the President must have expressed an opinion It could be nothing more than an opinion because there was no question before the Convention. Any other remark of the President might as well be appealed from. If he said it was going to snow to-morrow, or the day after to-morrow, or that it snowed yesterday, it would be just as appropriate a decision as this one as it now appears on the record.

Mr. M. I. TOWNSEND—I differ entirely with the gentleman from New York [Mr. Develin] as to whether the question arose. The question did arise necessarily, and the question having arisen, the President necessarily decided it. In the ordinary course of proceedings, the President puts the question to the house: "Those in favor of the motion will say, aye," and, "Those who are opposed to the motion will say, no," and the President upon the apparent balance of voices decides whether the motion is carried or not. But, in the opinion of the President, a question was to be decided, that requires that the officers of the house should count the vote.

Mr. MERRITT—The very question was raised, in that connection, by the gentleman from Richmond [Mr. E. Brooks], and was decided upon the statement of the President declaring what the decision had been previously. The question had just been decided by the President upon that very point.

Mr. M. I. TOWNSEND—I do not remember how that was.

Mr. RATHBUN—The gentleman from Onondaga [Mr. Alvord] put the question to the President directly, what will be the effect of it, and how many votes does it require to lay that on the table, and in answer to that, the President said that it would take the same number as for postponement.

Mr. M. I. TOWNSEND—The occurrence of yesterday may be adequately remembered.

Mr. VAN CAMPEN—I move that the Journal stand approved.

Mr. M. I. TOWNSEND—I decline to yield the floor for any such purpose. I deem it a matter of some importance, and therefore I desire to proceed further. The gentleman from St. Lawrence [Mr. Merritt] may be right in his recollection. The gentleman from Cayuga [Mr. Rathbun] may be right in his recollection. I do not remember, one way or the other, how that was; but I am putting the view that I take of this matter entirely upon the ground that the question necessarily arises, when such a vote is about to be taken, and it is entirely proper for the President to decide in advance how that vote should be taken; and if the President deems that it is a case where he should direct the vote to be so taken, that it can be distinctly and minutely counted in the exigency of the case, the decision upon such a question is as truly a decision as any other that can be made, and it must always arise in such a case. If the President thinks that it is a question where the vote must be counted, and the President decides that the vote needs to l counted, it is a decision upon a question th has already arisen, and that decision disposes c the question for the time being, at all event The President must necessarily have decided th he would have the vote taken differently from tl ordinary mode of taking the vote of this house.

Mr. KRUM moved the previous question upc the motion.

The question was put on the motion of M Krum, and it was declared carried.

Mr. DEVELIN demanded the ayes and noes.

A sufficient number not seconding the call, tl ayes and noes were not ordered.

The question was put upon the motion of M Robertson, and, on a division, it was declared los by a vote of 34 to 60.

No further amendment being offered, the Jou nal was declared approved.

Mr. GOULD—I ask leave of absence for M Rumsey for the remainder of the week.

No objection being made, leave was granted.

Mr. GOULD—I also ask leave of absence f Mr. Eddy for to-day and to-morrow.

No objection being made, leave was granted.

Mr. VEEDER—I desire to call the attentic of the President to the fact that when we a journed yesterday we were under the operatio of the previous question, upon the resolutions t adjourn this Convention to the city of New Yorl and that we cannot now, on re-assembling thi morning, commence under the ordinary routir of business, but that the Convention must pr ceed at once at the point at which it left o being under the operation of the main questio

The PRESIDENT—If the gentleman makes a point of order the Chair rules that the point o order is not well taken. That will be the firs business in order under the head of resolution

The PRESIDENT presented the memorial c the East River Medical Association of New Yorl in relation to the sale of dangerous medicines b apothecaries.

Mr. ROGERS moved that the communicatio be laid upon the table for the present.

The question was put on the motion of M Rogers, and it was declared carried.

The PRESIDENT presented a communicatio from the common council of Troy, tendering th use of a suitable hall in that city for the meetin of the Convention, after the meeting of the Le ialature.

Mr. CORBETT moved that the communicatio be referred to the select committee appointe yesterday.

The question was put on the motion of Mr Corbett, and it was declared carried.

The PRESIDENT—Resolutions are now in o der, and under this head the question is upon th substitute offered by Mr. Morris to the origin resolution of Mr. Merritt. The substitute will b read by the Secretary.

The substitute was read as follows:

Resolved, That this Convention hereby tende its thanks to Colonel Emmons Clark for his offe of the Seventh Regiment armory to this Conver tion, and that when this Convention shall ac journ on the last day of its sessions, during th present month, it do adjourn to meet at suc

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armory, or at such other place in the city of New York as may be secured, free of expense to the State, by a committee of three, to be appointed by the President.

The PRESIDENT—The previous question and the ayes and noes have been ordered.

Mr. FOLGER—I ask for a division of the question. That part which votes thanks to Colonel Clark I suppose there will be no objection to.

The PRESIDENT—The question will be so divided.

Mr. DEVELIN—Will the ayes and noes be taken upon the second part of the resolution?

The PRESIDENT—The Chair understands the order for the ayes and noes to apply to the whole proposition.

Mr. DEVELIN—May not the ayes and noes be waived by unanimous consent on the part of the Convention.

The PRESIDENT—It is competent for the Convention to do any thing it pleases by unanimous consent. If there be no objection the ayes and noes will be dispensed with in the first part of the proposition.

The question was put on the first branch of the substitute, and it was declared carried.

The question recurred on the remaining portion of the substitute.

Mr. BICKFORD—I rise to a question of order, that that resolution does not provide any definite place where the Convention shall meet when it adjourns.

The PRESIDENT—The gentleman can make that a reason for voting against it if he chooses. The point of order is not well taken.

The SECRETARY proceeded to call the roll on the remaining part of the substitute.

The name of Mr. Cooke was called.

Mr. COOKE—I ask to be excused from voting on this question and to be permitted to state briefly my reasons.

The PRESIDENT—The gentleman will be allowed five minutes, within the rule.

Mr. COOKE—I have voted steadily since this question has been up before the Convention in favor of referring it to a committee to ascertain whether suitable accommodations can be had in the city of New York, and whether it is expedient, in view of all the circumstances, that we should adjourn to that place. I, however, have not designed to vote for this resolution for the reason that I consider it objectionable on the ground stated by the gentleman from Jefferson [Mr. Bickford]. I see no objection myself to adjourning this Convention to the city of New York. I see many reasons in favor of it; and if, in view of all the facts, a committee to be appointed shall recommend and show good reasons to exist in favor of such adjournment, I shall support the recommendation. But here we propose to adjourn to no fixed place. We are to adjourn to some place hereafter to be designated by the committee. I object to thus placing the Convention in the power of any committee. I am willing to support any proposition to refer it to the committee to ascertain a place, and then, on hearing their report, I shall be prepared to vote on whatever proposition they shall submit.

The question was put on excusing Mr. Cooke from voting, and it was declared lost.

Mr. COOKE thereupon voted no.

The name of Mr. Stratton was called.

Mr. STRATTON—I ask to be excused from voting, and ask to give a reason. I do not like to vote for the resolution offered by the gentleman from Putnam [Mr. Morris] in its present shape. If there had been an opportunity for amending it, it probably could have been made by a slight amendment, so that I would have been satisfied to have voted for it. I am not opposed to the Convention going to New York, but I am opposed to leaving it to three members of this Convention to determine the future of the Convention. If that committee should not provide any place for the meeting of the Convention, clothed with the power they are, the Convention would have no place of meeting after the 1st of January. It is left entirely to this committee. I propose that this resolution should be amended to read thus:

Resolved, That a committee of —— be appointed to ascertain and report to this body what accommodation can be provided in the city of New York for the session of the Convention after the first day of January next.

That will leave it to this Convention to determine their place of meeting and not give the power to this committee. I ask to be excused.

The question was put on excusing Mr. Stratton from voting, and it was declared lost.

Mr. STRATTON thereupon voted no.

The SECRETARY completed the call of the roll, and the amendment offered by Mr. Morris was declared lost by the following vote:

Ayes—Messrs. Ballard, Barnard, Barto, Beadle, Bergen, E. Brooks, E. A. Brown, W. C. Brown, Burrill, Church, Clarke, Cochran, Comstock, Daly, Develin, Endress, Evarts, Flagler, Garvin, Gross, Hardenburgh, Jarvis, Ketcham, Larremore, A. Lawrence, A. R. Lawrence, Loew, Lowrey, Ludington, Magee, Mattice, Monell, Morris, Opdyke, Pierrepont, President, Prosser, Robertson, Rogers, Rolfe, A. D. Russell, L. W. Russell, Schell, Schumaker, Silvester, Sheldon, S. Townsend, Tucker, Van Campen, Veeder, Young—52.

Noes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Armstrong, Axtell, Baker, Barker, Beckwith, Bell, Bickford, Bowen, Carpenter, Case, Cassidy, Cheritree, Cooke, Corbett, Curtis, Duganne, C. C. Dwight, Ely, Ferry, Folger, Fowler, Francis, Fuller, Goodrich, Grant, Graves, Hadley, Hale, Hammond, Hand, Harris, Hiscock, Hitchcock, Houston, Kinney, Krum, Landon, M. H. Lawrence, Lee, McDonald, Merritt, Merrill, Merwin, Miller, A. J. Parker, C. E. Parker, Potter, Prindle, Rathbun, Reynolds, Root, Roy, Seaver, Smith, Spencer, Stratton, M. I. Townsend, Wakeman, Wales, Williams—66.

The PRESIDENT—The question now recurs upon the original resolution of the gentleman from St. Lawrence [Mr. Merritt], upon which the previous question has been ordered, and consequently neither debate nor amendment is in order.

Mr. SILVESTER demanded the ayes and noes.

Mr. E. BROOKS—As a point of order, will the Chair entertain a motion to lay upon the table?

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The PRESIDENT—The Chair cannot entertain the motion,

Mr. COOKE—I would like to know, if this resolution were to be adopted, whether it would cut off a motion to reconsider the vote on the amendment proposed by the gentleman from Columbia [Mr. Gould] the other day

The PRESIDENT—It does not.

Mr. VEEDER—I desire, if it is in order, to move the reconsideration of the vote by which the previous question was ordered.

The PRESIDENT—That motion will be received, and will lie upon the table under the rule. The Secretary will proceed to call the roll.

Mr. VEEDER—I desire to call the attention of the Chair to the fact that the rule provides for the case where the reconsideration is moved on the same day. The previous question was ordered yesterday, and I now desire to move the reconsideration.

The PRESIDENT—The Chair cannot entertain that motion. The ayes and noes have been ordered upon this proposition.

The SECRETARY proceeded with the call of the roll on the resolution of Mr. Merritt.

The name of Mr. Curtis was called.

Mr. CURTIS—I would like to ask whether this resolution binds the Convention to sit in Albany?

The PRESIDENT—The resolution will be read by the Secretary and the gentleman will put his own construction upon it.

The resolution was accordingly read.

Mr. CURTIS voted aye.

The name of Mr. Francis was called.

Mr. FRANCIS—I ask to be excused from voting upon this question. In my opinion the resolution ought to include inquiries respecting other places, as Troy, etc.

The question was put upon excusing Mr. Francis from voting, and it was declared lost.

Mr. FRANCIS voted no.

The SECRETARY proceeded with the call of the roll, and the resolution of Mr. Merritt was declared carried, by the following vote:

Ayes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Armstrong, Axtell, Baker, Barker, Beckwith, Bell, Bickford, Carpenter, Case, Cassidy, Cheritree, Corbett, Corning, Curtis, Duganne, C. C. Dwight, Ely, Ferry, Folger, Fowler, Goodrich, Gould, Grant, Graves, Hadley, Hale, Hammond, Hand, Harris, Hiscock, Hitchcock, Houston, Kinney, Krum, M. H. Lawrence, Lee, Ludington, McDonald, Merrill, Merritt, Merwin, Miller, A. J. Parker, C. E. Parker, Potter, President, Prindle, Prosser, Rathbun, Reynolds, Root, Roy, Seaver, Smith, Spencer, M. I. Townsend, Wakeman, Wales, Williams—64.

Noes—Messrs. Ballard, Barnard, Barto, Beadle, Bergen, E. Brooks, E. A. Brown, W. C. Brown, Burrill, Church, Clarke, Cochran, Comstock, Cooke, Daly, Develin, Endress, Evarts, Flagler, Francis, Fuller, Garvin, Gross, Hardenburgh, Jarvis, Ketcham, Landon, Larremore, A. Lawrence, A. R. Lawrence, Loew, Lowrey, Magee, Mattice, Monell, More, Morris, Opdyke, Pierrepont, Robertson, Rogers, Rolfe, A. D. Russell, L. W. Russell, Schell, Schumaker, Silvester, Sheldon, Stratton, Tappen, S. Townsend, Tucker, V Campen, Veeder, Young—55.

Mr. STRATTON—I offer the following re lution:

Resolved, That a committee of five be appoin to ascertain and report to this body what acco modations can be provided in the city of N York for the sessions of the Convention after t first of January next.

The PRESIDENT—This resolution will be ceived if there is no objection.

Mr. ALVORD—I object.

The PRESIDENT—Objection being made, t resolution will lie upon the table.

Mr. DUGANNE—I offer the following res lution:

Resolved, That two additional members be a pointed upon the committee just raised, and th said committee be instructed to extend its i quiries to the city of New York, and commun cate with the board of supervisors of that ci thereon, and report on the 18th inst.

The PRESIDENT—If there is no objection th resolution will be received.

Mr. ALVORD—I object.

The PRESIDENT—Objection being made, th resolution will be laid on the table.

Mr. VEEDER—Is an amendment to that reso lution in order?

The PRESIDENT—It is now too late to offe an amendment The resolution lies on th table.

Mr. CHURCH—I offer the following:

Resolved, That this Convention will proceed t perfect the article upon the judiciary, and provid for submitting the same to the people, and tha the Convention will then adjourn, subject to be re-assembled by the Legislature, for the purpos of completing its business. Such adjournmen will take place on the twentieth day of Decembe instant at twelve o'clock, unless the article on the judiciary shall sooner be perfected.

Mr. ALVORD—I object to the repetition of the resolution.

The PRESIDENT—Objection being made the resolution will be laid upon the table.

Mr. COOKE—I now call up the motion to reconsider the vote rejecting the amendment of the gentleman from Columbia [Mr. Gould] to the resolution just passed.

Mr. E. BROOKS—I ask that the amendment of the gentleman from Columbia [Mr. Gould] may be read.

Mr. GOULD—Mr. President, the resolution, I think, was not rejected, but laid upon the table.

Mr. MERRITT—My recollection is that no motion to reconsider the vote on the proposition of the gentleman from Columbia [Mr. Gould] was made.

The PRESIDENT—A motion for that purpose is now made.

Mr. COOKE—I supposed that a motion to reconsider was made and laid on the table, but it may have been that the amendment itself was laid on the table.

Mr. MERRITT—If I understood the motion of the gentleman from Ulster [Mr. Cooke] it was to reconsider—

The PRESIDENT—The gentleman will give

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until the fact in regard to the motion that made can be ascertained by the Secretary.

The SECRETARY read from the Journal as follows:

Mr. Fuller moved to reconsider the vote. Mr. moved to amend by inserting after the 'Albany' the words 'or the mayors of other which was decided in the negative—ayes noes 43."

The PRESIDENT—The Chair must rule that having been originally an amendment to the tion of the gentleman from St. Lawrence Merritt], which has been adopted under the tion of the previous question, it is not now der as an amendment, and can only be reached reconsidering the vote by which the resolution the gentleman from St. Lawrence was adopted morning.

Mr. DEVELIN—I move a reconsideration of vote by which the motion was adopted.

The PRESIDENT—That motion will be received, and under the rule will be laid on the table.

Mr. DEVELIN—I ask the gentleman from New York [Mr. Stratton] when he proposes to up his resolution in regard to seeking accommodations for the Convention in the city of New York.

Mr. STRATTON—To-morrow morning.

Mr. VEEDER—I move a reconsideration of the vote by which the motion of the gentleman from Chenango [Mr. Morris] was lost.

The PRESIDENT—That motion will also be received, and under the rule laid on the table.

Mr. M. I. TOWNSEND—Mr. President—

Mr. SILVESTER—Mr. President—

The PRESIDENT—The gentleman from Rensselaer [Mr. M. I. Townsend] is entitled to the floor.

Mr. M. I. TOWNSEND—The exigency for which I arose has now passed, sir. [Laughter.]

Mr. SILVESTER—I offer the following resolution:

Resolved, That a committee of five be appointed by the President to ascertain where a suitable hall and accommodations can be procured for the session of this Convention when it shall become necessary to vacate the Assembly Chamber, and that said committee report to the Convention on the 17th of December, instant.

Mr. ALVORD—I rise to a point of order.

The PRESIDENT—The gentleman will state his point of order.

Mr. ALVORD—It is, that we have by a vote this morning determined that a committee for the purpose contemplated in this resolution shall be appointed, and that, until that resolution shall be rescinded, no other resolution for the appointment of another committee for the same purpose is in order.

The PRESIDENT—The Chair rules that the point of order is not well taken. The proposition may be made to the Convention, and it will lie on the table for its future consideration.

Mr. ALVORD—I rise to debate the resolution.

The PRESIDENT—The gentleman rising to debate the proposition, it lies on the table under the rule.

Mr. VEEDER—I rise a point of order, that this, being a resolution relating to expenditures, should go to a certain committee.

The PRESIDENT—The Chair does not understand the resolution to be of that character.

Mr. VEEDER—The resolution does not say "without expense to the Convention"; consequently it is liable to give rise to expenditure, and therefore should go to a certain committee.

The PRESIDENT—The Chair rules that the point of order is not well taken.

The Convention again resolved itself into Committee of the Whole, on the report of the standing Committee on the Judiciary, Mr. C. C. DWIGHT, of Cayuga, in the chair.

The CHAIRMAN announced the pending question to be on the amendment proposed by Mr. Prindle to section 6 of the article reported by the committee.

Mr. PRINDLE—I offer the following as a modification of the proposition made by me:

The SECRETARY read the substitute, as follows:

There shall be a supreme court, having general jurisdiction in law and equity, subject to such appellate jurisdiction of the court of appeals as may be prescribed by law. There shall be in each judicial district, except the first, three justices of the said court, and in the first district there shall be five, any one of whom may hold special terms of said court and circuit court, and preside in the courts of oyer and terminer in any county. Said justices shall possess all the jurisdiction of the said supreme court not possessed by the said judges.

The CHAIRMAN—This substitute will be received in the place of the proposition previously offered by the gentleman from Chenango [Mr. Prindle].

Mr. COOKE—I do not design, Mr. Chairman, to repeat or to attempt to elaborate the arguments that have been submitted upon the pending question, but I desire to refer to a few facts and a few considerations that I have not heard presented to the Convention. The question now pending does not necessarily involve the merits or demerits of the plan submitted by the majority report. The present question is between the substitute just read and the proposition of the gentleman from Steuben [Mr. Spencer], which is substantially the plan of the existing supreme court. When the proposition of the gentleman from Chenango [Mr. Prindle] shall have been either adopted or rejected, then it will become necessary for us to determine between the report of the majority of the committee and the plan preferred by this committee on the vote now to be taken. I have but a few simple rules to govern my action in determining upon the plan of a supreme court which will please me. I listened with a good deal of interest and instruction to the very able remarks of the gentleman from New York [Mr. Evarts] and the gentleman from Onondaga [Mr. Andrews], in regard to the great object in the organization of this court; and while I do not entirely concur in the result at which the gentleman from Onondaga arrived, I can indorse almost his entire argument. It is necessary for us to have a supreme court for the State of New York as little sectionalized as pos-

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sible. This committee has already indicated its views in regard to a divided court. Commencing with the court of appeals, we have adopted a system whose main feature is unity, and although my idea was that we had sacrificed other important objects for the sake of unity, yet it is undoubtedly the voice of this Convention that these courts, so far as possible, shall be a unit and shall afford the smallest possible opportunity for conflicting decisions. My preference is for the system that gives the least subdivision of this court, the only court of general jurisdiction to be provided for the State. That system, in my judgment, is the best which is universal, which takes in the whole State, or as large sections of the State as possible, and deals as little as may be in subdivisions in accomplishing the great object aimed at. On this principle I preferred the minority report, with its three departments, to that submitted by the majority with four departments; on the same principle I prefer the substitute offered by the gentleman from Chenango [Mr. Prindle] to the present system repeated in the substitute of the gentleman from Steuben. It seems to me that the difference is very marked. The system now under consideration, and on which the question is now pending, confers upon the court general authority over the whole State, it provides for but a single court, and although consisting of twelve judges, each one of those judges is responsible for the conduct of the court throughout the State. My objection to the existing system is, that it substantially divides the State and the court into eight distinct parts, each part considering itself responsible only in respect to the business of that particular district. It is a well known fact, and one which need not be told to lawyers, that, as the court is now constituted, the judges in the sixth district, if you please, feel no interest in the court of the eighth district; they care nothing and feel no responsibility for the decisions there, and they confine their labors as well as their responsibility to that district alone for which and in which they were chosen; so that, in fact, we have eight separate courts, and the decisions in one district are of no sort of authority in another. Now, if it is necessary to have a court so subdivided, why, we must submit to it; but, so long as it is not necessary, it is a great mistake, in my judgment, so to subdivide the supreme court. I, therefore, consider the plan submitted by the majority of the committee far preferable to the existing system, because it, to the extent of one-half, corrects the evil of an unnecessarily subdivided court. The plan submitted by the gentleman from Chenango [Mr. Prindle] gives us a single court. He provides twelve judges to sit in banc and do the general term business, and act as an appellate court. He then provides a number of judges or justices to perform circuit and special term duties. I am not entirely satisfied with this system because it fails to reach one evil in our present judicial system, which, I think, is a very considerable one, and which I will presently state. I believe in having a single court of appellate jurisdiction. I believe in making every judge in this State as much responsible in one section of the State as in another, so that the judges will come to consider the whole supreme court of the State as the tribunal of which they form a part and for which they are responsible. I believe that then their decision will tend more to uniformity, and will be received as authority everywhere. Then, when we come down to the circuit system, my judgment is that every judge ought to have his own circuit and circuit calendar and that a great evil will be remedied if we have single districts in which each of the *nisi prius* judges shall exercise his function. At the same time, I desire to offer a further modification of the plan proposed, to read as follows: There shall be a supreme court, to consist of not less than nine justices, three of whom may hold a general term. Inasmuch as this Convention has deliberately decided that it is unwise to allow a judge to sit in review of his own decisions, I propose to secure that principle by erecting an impassable barrier between the circuit and special term and the general term duties, for when we have arrived at this point and so far turned back upon and reversed the policy of the Convention of 1846, as to have decided that it is not admissible for a judge to sit in review of his own decisions, I think we have taken a long step toward returning to the old circuit system; and in returning to that system, I propose to do it in terms. I never knew that there was so much prejudice against our old circuit courts that we need fear to commend this system calling it by its right name in remodeling and reorganizing the supreme court. I was surprised to hear from the Convention of 1846 that the system of circuit courts, with their judges perambulating the State and holding circuits, was liable to any serious objection. I was surprised to hear that that system has resulted in failure. I confess I never have been able to appreciate the reasons upon which the Convention of 1846 repudiated that system, and struck out on this new and untried path which has proved a labyrinth of confusion and disorder. It was urged in that Convention, it has been urged by the Legislature since that time, and it is still urged by many, that it was a great objection that judges should be permitted to sit in review of their own decisions; but I believe it is not yet entirely settled in the minds of practitioners whether it is wise or not to exclude judges absolutely from seats in the court that is to review their own decisions, rendered in the court below. This Convention, however, has expressed itself so emphatically in favor of such exclusion that I shall assume that to be the policy that is to govern the Convention throughout, and so assuming I think there is a better way to provide for it than that contained in the section reported by the committee and adopted by this Convention in terms—that "no judge, either of the court of appeals or of the supreme court, shall sit in general term, in review of his own decisions." I think it would be better to accomplish this object in the way I propose, by so constituting the courts as that they cannot commingle than to make it the subject of a distinct provision. An objection to this scheme is that the judges want the education that they get at the circuit in order to hold general terms—that the

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n better general term judges if they know just
ns the practice is at the circuits. Sir, I do
s very highly appreciate the reasons that are
ged in favor of that suggestion. I know that
erefore we have had justices on the bench of
e supreme court who seemed while in that po-
on to have a pretty fair idea of what was a
-ver *nisi prius* decision, without such facilities
f education. I never knew that Judge Bron-
n or Judge Jewett was particularly at a loss to
ow what an exception at the circuit meant,
hen is was brought up to the general term. I
ver supposed it was necessary for a judge to
me up from the circuit and take his place on
e general term bench in order to appreciate the
guments that were addressed to him, growing
t of some decision made at the circuit on the
ection or admission of evidence. Why, sir,
e are in no particular danger of getting men on
e supreme court bench who are ignorant of the
ractice. A member of the bar who has been in
ractice at the circuits for ten, fifteen, twenty,
r twenty-five years, and is then placed upon the
ench of the general term, can hardly be
quired to go to another school and serve
circuit judge in order to learn the circuit prac-
ce, to qualify him for the appellate bench.
hat can he learn on the bench more than he
as already learned at the bar? It seems to me
at he will get at the bar all the practical in-
rmation that is necessary for a judge to have in
rder to give a law opinion upon an exception
at is brought up in that court. But it seems to
e supposed that it is necessary for a circuit judge
visit the general term about once in three
onths to find out what the law is in order that
e may administer it at the circuit, and since we
ave had this question up, directly and indirectly,
ome gentlemen have seemed to believe that a
ircuit judge had no other means of learning what
e general term pronounced to be law than by
eing a member of that bench. Sir, is there any
ing in that argument? Is that sort of educa-
on really necessary for a judge? A circuit
dge is supposed to be learned in the law, and
e is supposed to be familiar with the later as
ell as the earlier decisions. Perhaps the gene-
l term in his district may have got some crotchet
some notion of doubtful propriety in the way of
ractice, or otherwise, that he would be ignorant
f if he was not a member of that court; but it
eems to me so much better to have these courts
eparate and independent, to have the circuit
dge try the cause upon his views of the law,
nd then, when it goes to the general term, let a
ew and fresh court take up the question and
eview it, and determine whether the decision of
he court below is obnoxious to any settled prin-
iple of law, as they understand it. Under the
ormer system, sir, did we meet any of these dif-
culties? Then we had Judges Denio, Gridley,
arker, Ruggles and others of equal eminence. Did
e ever dream that they were defective in that
ducation which is to be acquired alone at the gene-
l term, or did we ever feel that our system was
efective because under it ignorant circuit judges
ere imposed upon us? It seems to me, sir, from
he short experience that I had under that sys-
em, that it was the most complete and perfect
judicial system, as far as the supreme court was concerned, that could be devised. I object to the notion that it is necessary for a circuit judge to go to school to a general term every three months. I insist that it has no advantages whatever in the way of instructing him, or enabling him to discharge his duties as a circuit judge. But it is objected by the gentleman from Chautauqua [Mr. Barker], that the plan of dividing the court into only three parts is inadequate, that the business cannot be performed, that the plan does not give judges enough nor general terms enough, and he says that the calendar will increase in spite of all the efforts of the judges, and we will finally have the supreme court as much overburdened with business as the court of appeals now is. He supposes, therefore, that it is necessary to have eight, or at least four departments and four standing general terms. Now, sir, in the proposition which I have submitted to this Convention, I propose to have judges enough elected in the first instance to hold three general terms, nine judges; and I think that will be force enough to do all the business that is now to be done in the supreme court, or that is likely to come there. In the city of New York the number may be inadequate but then they have their local courts upon which the Legislature may confer just such jurisdiction as they think expedient, and so the business then can be kept under control. I undertake to say that outside of the city of New York two departments, or two branches of the court, can do all the business in banc that is now in the court, and they can do as much labor as the whole eight courts do now in general term. At an early period of this Convention I introduced a resolution which was adopted calling upon the county clerks to inform this Convention how many days of actual session had been held by the general terms of the supreme court in their respective counties. I never saw a response to that resolution. But we know that there are now outside of the city of New York seven districts. Each one of these districts holds general terms. I am informed by a judge of the second district that in that district their general term does not average over a week in duration, and never extends beyond nine days. In the third district the general term never holds over a week, and generally less, and adjourns for want of business; and as to the general term in the fourth district, I understand that it is only occupied four or five days, and so it is in the fifth, sixth, and seventh districts, and in the eighth they sit for less than two weeks. The average duration of these general terms, outside of the first district, is not more than one week each, and they are held in every district four times a year, so that we have in the seven districts twenty-eight weeks' service at general term annually, which suffices for all the business taken to that tribunal. Now give us two sets of judges and they can be ordered to rotate and exchange so that no one bench shall ever deem itself chargeable or responsible for any one section of the State more than another. Give us two general terms, having at their disposal in the aggregate one hundred and four weeks in a year; relieve them from all other labor and responsibility,

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and you have these judges devoted entirely to the business of the supreme court, and all the time they have to hold court is twenty-eight weeks, or fourteen weeks for each bench. This will give them ample vacations to enable them to decide their cases and write up their opinions, and it will also give them a considerable amount of leisure. So I propose that we shall organize a court with not less than nine judges, and leave with the Legislature power to increase the number and to create an additional general term in case experience shows it to be necessary. Each bench can hold a term once every two months if necessary, and the Legislature can provide for the convenience of the court and the bar. It can require that they shall hold general terms in various places throughout the State, or else it can confer upon the presiding justice, to be provided for by the Legislature, the right to designate not only the justices who are to hold the several general terms, and also to designate the places where these general terms shall be held, and all the business that will devolve on each bench, according to the present condition of litigation, will simply be fourteen weeks general term service annually. Now, I claim for this scheme, sir, that it removes the objections that exist against a court composed of sections. The idea of organizing eight courts which confine themselves to their respective districts, and of calling them the supreme court, is a most confusing one—a contradiction of terms. Instead of one supreme court in the State, we now have eight courts which we are at liberty to call supreme courts if we deem it worth while to give them any name at all. I do claim that it is wiser for us to adopt this plan, which gives the court all the capacity that seems to be required, and brings this important tribunal back to the condition it was in when it had the respect of the world, and when its decisions were authority everywhere. It will do more toward reducing the number of conflicting decisions, toward harmonizing the system, and giving power and efficiency to the court, than any plan, it seems to me, that has yet been presented. This feature of the plan we find in the substitute submitted by the gentleman from Chenango [Mr. Prindle]. I would suggest, however, that we had better leave it to the Legislature to fix the number of judges, placing the minimum at nine, because economy in the organization of this court is an important item under the present condition of things, and I believe that a far less number of judges than we now employ will be able to do all the business that devolves upon the court, provided the business and the powers of the court be properly distributed. We all know how much time is lost, and how often the business of the several courts is interrupted as when the judge is compelled to leave his circuit to hold a general term; whereas, if we had judges devoted specially to that business, they could apply themselves exclusively to it, and understand their business and do it to much better advantage and with much greater satisfaction than they can now when shifting from one class of duties to another. Then I propose to divide the State into a convenient number of circuits, "not less than fourteen, in each of which there shall be a circuit judge, who shall possess the powers of a justice of the supreme court, in the trial of issues of fact and of law, the hearing and decision of motions and in criminal cases, and at chambers; provided that no county shall be divided in the formation of circuits." Provision may be made by law for one or more additional circuit judges in the city and county of New York; and the power to increase may be extended to any other county which, by its rapid growth or increase, seems to promise more business than can be performed by one circuit judge. Provide a circuit judge for every double Senate district and you have all the force that is required in order to transact all the chamber, special term and circuit business. The city of New York, of course, and other cities that may contain more than two Senate districts, to have additional circuit court judges granted them by the Legislature. These judges are to have all the powers of supreme court justices at chambers and at special terms, and at circuits. They can do every thing except sit in general term; and although I would not take away the power of justices elected for the State at large, to hold circuits or special terms if they choose, I would leave that as we had it under the system of 1822—we would not apprehend any serious inconvenience from that arrangement, we should not expect one of them to come down to hold a circuit or special term, unless there was some great occasion for it, and there would be nothing to interfere with the principle of excluding a judge from sitting in review of his own decisions. I claim, sir, that this is preferable to the alternating system of judges traveling through the districts and holding circuits, one after another. Probably every lawyer who has been in practice during the last twenty years has seen inconveniences arising from this plan. One of the inconveniences is this. A judge comes down and holds a circuit. A party swears off his case, criminal or civil. He presents the usual affidavit and the case goes over. At the next circuit another judge comes upon the bench, another affidavit is presented, which makes out a case for postponement, and so the case is postponed. The judge may say this time that the case has been postponed once before, and that this must be the last application; that at the next circuit the cause must be tried. But at the next circuit another judge comes and the counsel again tell their story and present their affidavits, which again make out a case for postponement; and after a little wrangle between the counsel, the judge says it seems upon the papers that the case ought to go over, but the party must positively prepare to try at the next term. And so it goes on from time to time. This is the practical experience of many a lawyer in this Convention. Now in such an instance the party may make out a good case for postponement once, but it does not follow that the case will be postponed a second, a third or a fourth time on a like affidavit. Another thing is within the experience of every lawyer, and it is a thing which scandalizes the court, and causes unpleasant feeling to every one that is connected with it. A party comes to consult his counsel about preparing his case for trial

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at the next circuit. He says to his lawyer, "Well, I can be ready; but, let us see, is it best to be ready? What judge is going to be here? Judge Brown? Well, I think I had better swear the case off. He is not a man of my politics; he is too friendly with my adversary. The last time he was here he dined with the counsel on the other side; he is a particular friend of his. I think, therefore, we had better get up a case for postponement." Then the question comes up, "Who is to be here next?" "Well, Judge Jones." "He is the man," says the client. "He is a friend of mine. We will put the case over now, and bring it before Judge Jones." So that is concluded upon, and perhaps when Judge Jones comes to hold his circuit there, the other party postpones the case for similar reasons. This, although it imputes nothing improper to the judge, and is without a shadow of reason, has the effect to bring the court into contempt, and discredit, and yet it is a thing which occurs at almost every circuit. Now, it was not so under the old system. When the circuit came around, we knew what judge we were to have. He was our circuit judge. His business was to hold that circuit, and we knew that he would be there, and that if we did not try our cause before him at one circuit, he would preside at the next, and so there was none of this postponing of cases for the sake of getting them tried before a friendly judge and I never heard, under the old system, of the judge being too familiar or intimate with the counsel on either side, nor did I ever hear the objection of politics raised by lawyers or clients with reference to any judge or with reference to the policy of trying their causes before him. Again, a judge chosen in this way is responsible for the calendar of that particular court. He knows what cases are to be tried, and that if he does not try them at one term he will have to try them at another; and so we avoid this shuffling off business merely to get rid of it for the time, and leaving what is undone for the judge who is to come after him. For these reasons I prefer to have single circuit districts; make the judge responsible for the trial of all causes in that district; allow him to exchange with other judges, of course, at his pleasure, but leave the counsel and every body to understand that the court is to be held by the circuit judge of that circuit, to calculate upon that and make their arrangements accordingly. Now, there is a single thing in the report of the majority of the committee to which I wish to call attention. This proposition will erect a barrier between the two courts, the trial court and the court of review, which is very desirable if this Convention is right in its prejudice against allowing the judge to sit in review of his own decisions. The report of the majority of the committee hardly does that. Not only that, but it does not allow the Legislature to do it. Section 8 provides for a law designating, from time to time, the justices who shall hold general terms, and also for the designation of a chief justice of each general term, and that four of such judges shall be designated for the general term, three of whom shall form a quorum. The Legislature can designate those justices. Suppose this is all arranged just as the committee contemplate, and then here is a provision that any one of such judges may hold a special term or circuit court, and any one of them may preside in courts of oyer and terminer in any county. The Legislature have it not in their power to prevent judges sitting in the same court at a general term, which is to review the decision they have made at circuit. I think the principle that the Convention have adopted is entirely violated by this provision. Four justices hold a general term, and three shall constitute a quorum. These four justices have been holding circuits within their district. Any one of them may hold a circuit. The court may get together and assign circuits to the several justices, and the Legislature cannot prevent it because they are tied up by this provision. Any one or more of such justices may hold a special term or circuit in any county in the State. It is out of the power of the Legislature to say they shall not hold a special term in their districts. Now, these four judges who are holding the general term may distribute the circuit business among their number. Suppose they get all four of them in a general term, and the first case is called. One of the judges who was on the bench says: "That case I tried in the court below; I will go down and sit in the bar." He goes down and remains off the bench until that case is argued. Then the next case is called and another judge says; that case I tried at circuit. And he will call his brother back to the bench, and in turn he retires. And so it will go around, they will sit and hear arguments for a week or two, and then all retire and go into the consultation room. Does any gentleman here suppose that it is possible to have a consultation and a deliberation upon that list of cases between all four of the justices without each one exerting more or less influence in the deliberation upon the case which came originally before him in the court below? I do not pretend to know any of the secrets of these deliberations; but I do not understand how it can be otherwise, how judges can avoid saying to their brethren, with whom they are on most intimate terms, "how did you come to make such a decision." The judge of whom the question is asked goes on to explain it, he makes an argument without intending it. He does not mean any harm; he thinks it is law, and will undertake to impress his views upon the other judges. If this is to be so, if these gentlemen are allowed to be present while their decisions are under review, I would rather, ten times over, each one of them would be on the bench when the argument was had, so that the argument might be addressed to him. When he is on the bench he is under a responsibility to hear what is said and to consider the argument. But when he is off the bench and presumed not to listen to the argument, and subsequently goes into the consultation room, it is with precisely the views he had when he came off the bench where the cause was originally decided by him. He has had the benefit of no argument, whereas, if he had been on the bench he might be affected by any new light that could be thrown upon the question. I think, while we

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are about it, if we are to exclude a man from the bench and from sitting to hear an argument because he has decided the case below, we ought also to exclude him from the court that is to decide upon the case. This is all I designed to say, all I care to say upon this question. For these reasons I am in favor of returning to the circuit system and leave it in the power of the Legislature to increase either branch of the court, either the general term or circuit, to any number that will meet the demands of business, rather than tie up the Legislature. Not to cast the judiciary in an iron mold, but leave it flexible, leave it in the power of the Legislature to carry the court home into every county, in turn, if you please. Leave it in the power of the Legislature to declare general terms shall be held in Albany, Poughkeepsie, Utica, Binghamton, Rochester, or any other places in the State; carry them around, pay the judges for their time, trouble and expense, so they can afford to discharge their whole duty to the State; then we shall have a court that will render uniform decisions, a court that can commend the respect of other States. But if you persist in cutting up the court into sections, although we may call it a supreme court of the State it is really three or four or eight supreme courts so-called. Now, I propose to vote for the substitute offered by the gentleman from Chenango [Mr. Prindle], in preference to the present system. I think it is better because it has universality. It is comprehensive. It takes in the whole State. Every judge is as much responsible in one section of the State as in another for the transaction of business. I prefer it on that account, and I prefer it also because it divides the two branches of the court, the appellate from the trial court, and leaves each one to the proper discharge of its own functions. When this matter shall be disposed of, and we get farther along with the subject, I desire to test the sense of the Convention with respect to the court as I propose it. I claim for my plan that it is entirely simple, and I like that court best which is the most simple. I like a court that is not loaded down with machinery. I propose simply to furnish the judges for a general term, and the judges to hold the circuits and leave the Legislature to work out the problem with improvements from time to time, as will best promote the interests of the State.

Mr. PIERREPONT — As a member of the Judiciary Committee, I wish an opportunity to say a few words in defense of their report. In the earlier sittings of the committee I had not the honor to be present; unfortunately I was compelled to be absent. In the later sittings of the committee I was present at every one. It is well known to this Convention that the committee is composed of fifteen lawyers, selected from every part of the State. Each man is a man of experience, and certainly many of the committee are men of eminence. They are of different political parties. I am sure I do not err when I say that no member of that committee ever could have discovered, from any thing which occurred in the committee room, to which political party any member of that committee belonged. All have been earnestly engaged for a period of full three months attempting to frame such a plan for the admin tration of justice in this State as would, on t whole, be best. I know very well that membe of this committee consulted lawyers outside; tn consulted judges, they consulted laymen, th consulted the members of this Convention, th consulted the history of the jurisprudence of o own country in other States, and of other cou tries abroad; and when it appears that fifte lawyers, after a deliberation of more than thr months, all concluded (with one exception) sign the report, it is reasonable for this Conve tion to conclude that it was a work of labor, th it was a work of intelligence, and that it was work of honest zeal to promote the administr tion of justice in the State. It should recei reasonable consideration on the part of this Co vention. The very question which the gentlem from Ulster [Mr. Cooke] has just discussed b fore this committee we all considered; it w with great care deliberated upon, and final we were obliged to come to the conclusion which we have arrived, and we made the repo which is now before us. That report is the resu of our best deliberation. Now, we have had this Convention an historical speech on the su ject of the judiciary, learned, able and eloquen History in relation to this great question is c immense value. But I undertake to say to th members of this Convention that every man wi find written in his own heart just such histor as is written in the books which have been cite The principles of human nature are permanen and enduring forces, and the same principle which formerly actuated men and made the histor which has here been cited, now act upon ever human being. The principles of human natu were the same in the days of Solomon and in th days of Shakespeare, and they are the same i our own day. And we can learn by consul ing our own experience, and by observing ou own fellow men, what kind of things a judge wi do and what he will fail to do under given ci cumstances. When we remember that he is man, we should remember that the appointmen by the Governor or the appointment by th King, or an election by the people does no change his nature one iota. He is no wiser th next day after an election, he is no purer the nex day after an election than he was the day befor He is the same human being, subject to like pa sions as ourselves, and he will as surely be in fluenced by them after elections as before. An a wise legislator will consider that fact, and wise statesman will frame his system of laws t meet the affairs of men as they actually exist, an not as he may hope or wish they were. Th experience of the world has proved that etern vigilance is the price of liberty; and it ha equally proved that no government can lon maintain its freedom without the independenc of the judiciary. That must be secured in som way, or liberty will soon depart. History and e perience prove that it is much easier to lose lil erty than it is to regain freedom. The executiv branch of every government, being more activ and more energetic, always has a tendency to en croach upon the slower functions of the judiciary

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and in troubled times the power of the judiciary is, in a great measure suspended, and in actual war the laws are entirely suspended and *inter arma silent leges* has passed into a maxim. In our own time we have seen the authority of the judges in a measure suspended. We have seen within five years over almost this entire country, that but feeble power remained in the judiciary. And we have seen under our present system that useful authority of the judges is much less than it was when they were more independent, and that many of them are all their judicial life, through fear, held in bondage. Fear of what? Fear that they will not be re-elected; fear that they will give some offense. And somehow or other we desire to have such a system as will relieve the judiciary of that fear, and that bondage, and place them in reasonable independence. All admit the evils of the present system; all admit that somehow or other it does not work well. We are not satisfied with it. To reform the judiciary, it was supposed, was one of the chief objects of this Convention. Dissatisfaction with the present judicial system is very general. And the learned gentleman who has just taken his seat has spoken with approval of the manner in which judges conducted their circuits, and their business under the old system. He says, under that system he never heard it said that Mr. A, the counsel on one side of a case had been dining with the judge; that he never heard it said that it was necessary to make an affidavit, more or less false, in order to get a case put over, through fear of the influence of Mr. B on the judicial mind. Of course he did not. And why has he heard it now? If these evils have crept into our system, is it from any other cause than that influence which grows out of the re-election of judges? Can he assign any other possible reason than that?

Mr. COOKE—I impute nothing to the judge. The reason I assign is that the parties themselves are hoping constantly for a judge more agreeable to them.

Mr. PIERREPONT—But somehow or other an influence is produced upon the judge. How happens it that they hope to produce that influence? How can they hope to produce that influence if their experience and their knowledge of human nature has not told them that it can be produced? My learned friend may be sure he will not discover wise and intelligent lawyers, from day to day and from term to term, attempting to bring about results which he knows cannot be produced.

Mr. COOKE—If the gentleman paid attention to what I was saying, and if I spoke what were in my thoughts, I was speaking of the objections that clients make to their counsel; I said nothing about lawyers entertaining these hopes.

Mr. PIERREPONT—Well, it is not the lawyer, then: but some way it is the clients. How does it chance that clients get it into their heads that such influences are to be produced, and that they apply to their lawyers and tell them to exercise this influence? How does that come about? Now it is the client. He has got it into his mind that inasmuch as he can vote and revote and use his influence, and depose from place and power a judge, that by that power he will bring about the result he desires. It is the client, not the lawyer. But it strikes me that the client must produce some influence on the mind of the lawyer, or else the lawyer would not read the affidavit. The lawyer would say to his client: "My friend, you are wholly wrong in this idea about the influence on the judge; there is nothing in it, and I will not place myself in a situation where such an imputation can be thrown upon me, that I could imagine the judge could be influenced by these motives which you suggest." The gentleman has alluded to the determination of this Convention to exclude judges from sitting in review of their own decisions. And he wishes to make it even more severe than the report of the committee has made it, more perfect in its exclusion. He says he understands it to be the sense of this Convention, that they will, by every means, prevent the judge from sitting in review of his own decision. Now, I believe that he is entirely correct. I believe that is the sense of this Convention. I believe it to be the sentiment of every lawyer, that it is best and right the judge should be excluded from sitting in review of his own decision. There are, in this Convention, many gentlemen who are now judges, several who have been judges, and I think there is not one of them who is not opposed to allowing a judge to sit in review of his own decision. In this they accord with the sentiments of the community. Now, let us ask, why is it that we all, with such unanimity, agree that the judge should not sit in review of his own decision? Is it not simply because from our knowledge of human nature we believe that he will have a bias in favor of his former opinion, and, as a general rule, an inclination to sustain that judgment which he has deliberately formed in the court below, and therefore from his natural desire to sustain himself, and from that natural pride of opinion which belongs to all men, and which belongs to great men as well as to small ones, we think it wise that he should not be placed in that situation. I know very well, from some little experience at general term, that when a judge finds his own opinion under review, he is often one of the most sensitive of men, and that he seems to feel more sensitiveness in having his deliberate opinion overruled by two associate judges than would be supposed by those who have never had the opportunity to observe it. My experience is in favor of the exact judgment which this Convention has come to upon this subject. We want, as we all admit, an independent judiciary. Well, I think I hear some demagogue say, "would you have a judiciary independent of the people?" I say to you, Mr. Chairman, if I were in England I would have the judge independent of any caprice of the sovereign king, and in America I would have a judge independent of any temporary passion of the sovereign people. I would have him independent of every thing but a sense of justice, of an enlightened conscience, of a wise judgment and a deep sense of duty toward God and his fellow man. I would not have him independent of public opinion. No just man, no honest man, will ever

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claim to be independent of public opinion. It is a widely different thing to speak of public opinion, and the temporary whim of a passionate public, or the temporary caprice of a fitful sovereign. Widely different public opinion operates in England as well as in this country. Public opinion operates in every free government with immense power, and it will act upon every judge, however independent the tenure of the office in which you place him. Only a bad man will defy a well formed public sentiment. The opinion which the public settles down upon as its sober judgment is generally right. The Greek philosophers held that whatever the great people had on the whole settled upon as right was right. Hesoid adopted the maxim, and afterward the idea was clothed in the Latin words, "*Vox populi vox Dei*," meaning that whatever had become fixed and settled in the public mind as wrong (like murder, theft or robbery) was wrong, and that whatever the great public had, with one voice, settled upon as right (like justice, truth, fair dealing, etc.) was right, and that such universal sentiment had its origin in the Divinity and was the voice of God. Now, it seems to me that the only way to get at an object is to find out what object we want, and next find out how to get it? Now, what do we want? We want a man for judge who is in every way a proper man to fill that office. Now, whom, I ask, Mr. Chairman and every member of this Convention, do you want for judge of the supreme court? You want an honest man; you want a lawyer, well grounded in legal principles, experienced in the affairs of life, a man with a clear intellect and wise judgment, a man who is a courteous gentleman, of a sound mind in a sound body, in the early prime of middle life. Such a man, we all agree, we would like to select to be a judge of the supreme court. We are all agreed about that. Next, how shall we get him into that place? Is there any mystery about it? What is the difficulty? What is the puzzle? Cannot the great State of New York secure the services of such a lawyer as I have described? Do you think the New York Central Railroad would have any difficulty in securing as counsel the services of such a man? Do you think any rich merchant would have difficulty in securing the services of such a man? Cannot the great State of New York secure the services as supreme judge of the same man whose services as counsel the Central railroad or the thrifty merchant could secure? Why cannot the State get exactly such a man for the place of the supreme judge? Let us see the man. We have agreed upon him, and he is brought into this room, and you, Mr. Chairman, say to this gentleman: "You are the man selected by this Convention as a fit man to be judge of the supreme court. We want you to take the office." That is very well. He feels complimented by it; he is a courteous gentleman, and he asks you what is the inducement which you propose to make him become a judge of the supreme court? He says: "I am now forty years old; I have had a thorny road. In my early youth I had to get my education as best I could." If he is worth any thing, he has obtained his value through toil. I do not know the history of the members of this Convention, but one thing I do know, that there is not a member who is worthy to be a member, who was dandled on rosy beds up to this Convention. He has gone through trials. If his right arm is strong, it is because he has lifted weights. If his moral nature is lofty, it is because he has lifted moral burdens. And now the man stands in this room before you and tells you that through a road beset with difficulties, he has prepared himself for future success in life. He has his wife and children to support; he sees before him a career from forty to seventy—thirty years, where he has a right to hope he may reap a rich reward for his patient toil, for his integrity and for his high moral character, which he has preserved untarnished. Has he not such a right? What do you propose to him? To divert him from that career which he has laid out for himself and that he give his services to the State. This is the proposition: "We propose to give you a salary of five thousand dollars a year; we propose to elect you for a term of fourteen years; and however able and just you may be, and however you may prove that our judgment in your selection was wise, we propose that by no possibility shall you ever be allowed to hold that seat again. You shall go from forty to fifty-four, and when you reach fifty-four and shall have broken yourself off from all connection with the world of business and fitted yourself to be a judge, by a constitutional provision we propose that you shall never serve the State again in the office which you honorably fill." I fancy I see the courteous gentleman bow and retire. I think he would not wish your votes on those conditions. Well, what are the conditions upon which you can get such a man to serve the State? It is a great mistake to suppose that a judge requires the full measure of a large professional income. It is by no means necessary. But as he is a human being, as he labors for some kind of reward, he does not propose to labor for the State from the age of forty to the age of fifty-four and thus to leave his wife a household drudge and his children beggars, for the empty honor of these few years, after which the State says, "we cast you off; you shall never serve us more." The State can always secure the services of such men and at a reasonable cost so far as money is concerned. But honor must mingle with the money and make up the fair reward; that honor which comes with the permanency of office. You cannot ask a man to break off the career for which he has been all his early life in preparation without any reward. You do not propose a pension, nor to re-elect him at the end of his term, and thus you say "if you have served the State fourteen years as a judge you never can be fit to serve it again." There is neither justice, reason, or wisdom in this, and it will not strike the people as just or wise. It will not strike the people as likely to secure the best services of its best men in the administration of justice. You can give him a moderate salary, you can make the office a permanent place until the age of seventy years. And if the judge does his duty well ought he not to stay there? If he does not do his duty well you have an easy mode of removing him: there is no trouble about that. Hence

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there is no danger in giving him the office until the age of seventy years, and if he doth well you may keep him there, and if he doth not well provision is made for his removal. Without reward you surely will not get his services at all. Some one will take the office. We can safely set it down that it will never happen that there will be any difficulty in getting somebody in the State of New York to take the office of supreme judge; and if he is not the man I have described he is the man I will now describe. He is neither cultured lawyer nor courteous gentleman nor honest man; he is of feeble capacity, unable to live at the bar or he is ready to be dishonest on the bench. If your system drives away all the able and honorable men, the weak or the knavish men will take the places. The present system, which allows re-election, is far better than the one proposed where the term is short and no re-election is allowed. Under the elective system we have had very good judges. The evils are not in election, but in re-election, and the want of sufficient permanency and independence. It is well known that men of good character and capacity have, when they found themselves after a term of years of service upon the bench, with all their business relations broken up, and the question of their renomination before them, taken such course in order to secure their re-election as made them blush with shame. And let no man condemn before he has been tried himself. As wise legislators we should so shape the laws as not to lead into temptation. You can get the best men to take this office when you give them permanency and, with permanency, honor. They do not require the great rewards of high professional incomes; but reasonable compensation, permanency and independence, and the honor which follows the discharge of duty in high place. I understand there have been in this Convention objections urged to permanency of office upon the ground that, when a judge has his place fixed until the age of seventy years, there is danger that he will grow arbitrary, that he will be insolent and overbearing. Now, I ask every lawyer who has practiced in our courts if he thinks, under our present system, where the office is not permanent, the manners of the bar or the manners of the bench are any better than in the time of Chancellor Kent. Does any body find the bar more courteous here than in the city of Washington, where judges hold their offices in permanency? Is it human nature that when you place a man in a position of security where he is expected to respect himself and expects others to treat him with respect, that his conduct will be less courteous or dignified than when his position is insecure? I would place a judge in a position where he would be independent of all those influences which injure the manners and weaken the character and dignity of a judge. Place him in a situation of honor, and give him a reasonable salary and permanent term of office, and you will never have any difficulty in getting good men to fill those places. But so long as you leave it otherwise you cannot get the best men to hold the office. And hence the State is not well served, because it does not give such rewards as are proper for it to give, to wit: reasonable salary and permanency of place, and that honor which attends a reasonable salary and permanency of place. When you give an honorable man a place of power he will use the powers with justice and with courtesy; when you give him a place of responsibility, if he is rightly constituted he will feel that responsibility, and not abuse it. If this Convention should adjourn and come before the people with the proposition that no judge shall hold his office more than fourteen years and then shall never have a chance of re-election, the Constitution will be defeated; I should feel that it ought to be defeated. I know that a great many of the best men with whom I am acquainted would oppose its adoption and would be zealous to defeat it. The Constitution cannot be readily changed; it will remain for twenty years to come. You cannot change it when once adopted without great difficulty. It seems to me that no really competent lawyer will ever accept a position as judge upon the terms propoeed; he will reject the place, and it will be filled by an inferior grade of incompetent and dishonest men. I have heard it said that the supreme court should have a term of service less than the court of appeals. I think a moment's reflection will show that if there is to be any difference it should be in favor of giving the shorter terms to the court of appeals, and for this very reason: the greatest objection that has ever existed against placing men upon the bench for life has always been that they would be so far removed from the influences of laymen and from an intimate knowledge of the sentiments of the people, and from their acquaintance with business in the ordinary affairs of life, that they were in danger of forgetting whence they came, and of losing the feelings and sentiments of the people who placed them there. But a judge of the supreme court who sits at circuits to hear the trials of cases, to see witnesses, to examine and hear testimony, to see men, women and children, and thereby through that magnetic influence to learn what is in the human heart, is in a better situation to hold his office longer, if there is to be any difference, than the man who is always removed from these influences. But of all things let us have the law so that a judge shall hold his office until the age of seventy years. There is no greater fallacy than is contained in this idea that in the days gone by men were wiser or more learned than now. The world has never seen so high a degree of intelligence as exists to-day, and never in the history of this State were there as many intelligent men and able lawyers as to-day. Nothing is more erroneous than the notion that every thing which is old is good, and that whatever is new is inferior. The same influences operate now which operated in former years; the same things which made good and eminent judges in years gone by, will make them again if you will apply the same motives. There can be no doubt about that. Human nature is a permanent and enduring force; it is as unchanged as a fixed star; you can always rely upon it. Now, it has been stated upon this floor, by one or two gentlemen, at least, that certain things which are here proposed ought to be done, and yet they think the people will not vote for them. Now, I undertake to say that the people will vote for any

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thing which they ought to adopt, if the subject is fairly brought before them; they are capable of understanding it, and the result of their deliberations and of their varied wills will be found to be right? Do you not believe it? You believe it in all your actions in life. You go to Albany and make inquiries concerning a public man; you find out his public reputation, what the public think of him, what is his character in that community; and if his reputation in that community for truth is bad, you go into court and swear that you would not believe him under oath. Would you blast the reputation of a man for truth, if your oath was not founded upon the truth and justice of public sentiment which has finally settled down into firm belief, and which, when it settles down, is right? It has been repeatedly doubted whether we can make a Constitution which the people will adopt. If this is so, then one of two things is certainly true; either we have not the capacity to make a good Constitution, or the people have not sufficient intelligence to appreciate our labors. I think we can make a good Constitution, and if we do, I believe the people will fully understand it and adopt it. I think no one in this Convention will pronounce us incapable. Will any one say that the people are too ignorant to vote for a good Constitution? I think there can be no greater mistake, than for us to hesitate in carrying out whatever honest convictions we have in framing this fundamental law; and if we carry out our convictions, and make a Constitution suited to the age and the State in which we live, the people will know that it is such a Constitution, and that it is suited to their wants, and they will certainly adopt it. But I doubt not both parties will join in defeating it, if it is not a good Constitution, and not suited to the wants of the people at this time. What I ask, what I urge, is that, the members of this Convention will be fearless as to what the people will say or do about our work, feeling quite certain that if we do right the people will find it out, and also that if we do wrong they will find it out. What made General Washington President of the United States for eight years? It was not the politicians; they had little to do with it, and they could not control it. It was not that he was a brilliant soldier. He was made President of the United States and continued in office for eight years because the people, in their sagacity, with instinctive knowledge of what they needed, saw in him a fit representative of their will. Whenever the public mind is agitated and awake upon any great public question, the sagacity of the people will select the right man to represent their wishes and to direct them in the way of safety. The people will judge of this Constitution according to its merits, and they will act upon it as they find it suited to the exigencies of their case. And when we come to so important a matter as the making of the fundamental law of the State, you will find that no politician can control this business in the present state of our affairs. Not long ago the Attorney-General of the United States said to me in Washington, "You ought to remember that the State of New York is not only making a Constitution for itself, but is making a Constitution for all the rest of the States." You will find that all men in the other States are looking to the State of New York to see what kind of a Constitution it will adopt. Shall we, then, in framing this Constitution, be looking about to see what views a few politicians express over an oyster supper or at a hotel dinner? If we peep about for that, we had better go home "and peep about to find ourselves dishonorable graves." We have all talked with the people during the time we have been away from here in the recess, and you know that they understand what we are about, and that they will find out whether we finally present them with a Constitution which is the result of our best deliberations and of our honest convictions or not. I undertake to say that no lawyer ever yet has been able, in the trial of a cause, to impress upon a jury convictions which he did not himself really entertain. The jury see through the hypocrisy, and the mass of the people will see through the hypocrisy of their delegates just as quickly; and if we do not present a Constitution which we believe is on the whole the best that can be framed, the people will vote it down, and they ought to vote it down, and the honest men of all parties will be active in trying to expose the sham, and to defeat what we ourselves believe to be something not the best. When we come to this sixteenth section of this article, which relates to the tenure of office of the judges of the supreme court, and the mode in which they shall be placed in office, I trust that the section may be wisely considered, and that we will give up the idea that we can get a good judge by offering a place upon the bench for eight, or for fourteen years without a chance of re-election. To get good judges in that way, is, in my judgment, entirely impossible. We have got through the war; we have started on a new career; we have reached the time when a new Constitution is needed. I know that many doubt whether we have yet reached it, and think that we should wait to see the result of the next presidential election. I have heard many members of this Convention say that; and I have heard it said outside of this body that we had better wait to see what will be the result of the next presidential election. Now, how will the presidential election affect the Constitution of the State? You do not doubt that the country will remain permanent; you have not any doubt that we have now reached a time when there is a reaction following the inflations caused by the war. If you read the papers of this morning you will discover that in the city of New York there are five thousand persons thrown out of employment within the last few weeks; you will discover that prices are falling, and that many men are failing, that labor is not in demand, and that business is in a depressed condition. We need not wait for the next presidential convention, or the next presidential election to see what kind of judges are wanted. You want honest men, whoever is President; and you want able men, whoever is President; and you want to surround the office with such inducements as will invite the best of men to accept it, whoever is President. You will find when the public mind is awake and agitated, as it now is, upon the great ques

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tion of finance, and question of suffrage, on the question of human rights in their varied forms — when the whole public attention is called to these questions—that the public will, and the public choice will center upon some one man who will honestly represent the public sentiment, and the great wave of public feeling will lift him into the presidential chair as easy as a ship is lifted by the waves of the ocean. You need not wait to see what is to be done in the future before you present to the people of this State a Constitution for their adoption. The people have sent us here for the purpose of getting something in the way of a Constitution that will be an improvement upon the present. We of the Judiciary Committee have taken all the pains we could to get information upon the various subjects with which we had to deal in framing this article. And on this subject of the tenure of office, and on the mode of placing the judges in office, it seems to me that if gentlemen will reflect there can be but one opinion. Now, it is said by some gentlemen who have spoken upon this subject that they would be in favor of the tenure until seventy years if the judges were appointed, but not otherwise. I do not understand the logic of that distinction. The judges are appointed; what is the difference? In England, where the sovereign power resides in the crown, it makes the appointments. In this country where the sovereign power resides in the people, the people make the appointments. There is no real difference, and there is no reason in saying that you would be in favor of a tenure for good behavior if the judges were appointed, but that if they are elected you insist upon a short term. Why not re-elect the judges if they do their duty well; but we have all come to the conclusion that it is unwise to make the judges subject to the temptations attendant upon re-election, and therefore why not agree to make the office of supreme judge honorable, independent, and permanent during good conduct, until the age of seventy years.

Mr. M. I. TOWNSEND—I agree with the gentleman who has just taken his seat in many respects, though in several I shall be compelled to differ with him. I do not rise for the purpose of combatting any remarks that he has made, but for the purpose of expressing some views in regard to another question that arises here. I agree with the gentleman who has just taken his seat [Mr. Pierrepont] that it is very desirable to elect General Grant to the Presidency; and I agree with him in the opinion that the people will elect General Grant, whatever politicians may do [laughter]: but I go for the election of General Grant for the term of four years instead of during good behavior or until he shall be seventy years of age, and in that I differ with the gentleman. [Laughter.] But to the purpose for which I rose. I understand that the proposition of the gentleman from Chenango [Mr. Prindle], and the views of the gentleman from Ulster [Mr. Cooke], both concur in seeking to prevent any man who holds the position of circuit judge—

Mr. VAN CAMPEN—I would ask the Chair if it would be in order to move the previous question on the nomination of General Grant.

The CHAIR—It would not. [Laughter.]

Mr. M. I. TOWNSEND—I would like to ask the gentleman from Cattaraugus [Mr. Van Campen] whether he will be governed by his party and vote with his party on that question, or whether in case the question is moved he will, although his party should adopt General Grant in their caucus, feel at liberty to vote otherwise?

Mr. VAN CAMPEN—The gentleman will feel bound to follow his own convictions.

Mr. M. I. TOWNSEND—Then there is no use in my trying to go with my friend on this subject, for I will follow my convictions, and I suppose he will follow his. As I said before, I understand that both these propositions prohibit any man who holds circuits from ever taking part in the deliberations of the general term. Now, I believe that to be a bad proposition and that the result of its adoption would be injurious. I agree with the gentleman who has just taken his seat [Mr. Pierrepont], that a man, when selected for the office of judge, whether selected by the Governor or by the people, will, in all human probability, be, the day after his election, precisely the same man that he was the day before. A man is not elevated into a god by being made a judge; he is not made any wiser by it. His elevation gives him neither more legal knowledge nor more legal experience than he had the day before, when he was a mere lawyer. So believing, I think we should look to this question a little, and should not forget that it is quite desirable that the judge himself, after his appointment or election, should grow, and that we should not adopt any course of policy which would prevent him from having all the opportunities for the improvement of his own mind, and the enlargement and extension of his own capacity that it is possible to give him. I have heretofore spoken of the advantage which the bar obtains from the opinions of the judges being written out with deliberation and published in the books. The gentlemen of this Convention who are lawyers cannot but know and appreciate the fact that a judge when he sits hearing arguments at the general term, and participating in the decisions which are made there, is himself at school, and is not only at school, but at the best school for him in the world. A lawyer prepares himself perhaps by months of study for the argument of the question at the general term, and probably his opponent, looking from a different stand-point, has devoted as much time to preparation. They both go down to the general term, and there, before the judge, who has his mind entirely relieved from all other business, they make their arguments. That judge, I say, is at school. He is listening to instructors with views acquired by looking carefully and laboriously at the same question from different stand-points—schoolmasters who have learned all that there is in the books, and all that is to be drawn from their own experience and from the experience of the world, so far as they have participated in it. The judge listens to their views, and from their respective propositions seeks to discover the truth, and sifts out from the chaff of the argument on the one side and on the other the grains of truth that must necessarily be contained in them. Now, is not

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this an improving process? Is it not a fact that our judges grow faster than any other class of men in the community because they have this school. Now, shall we close that school against the judges? My friend from Ulster [Mr. Cooke] intimates that a man who is a circuit judge is a circuit judge. True; but he may be a circuit judge with very extensive knowledge, or he may be a judge with very limited knowledge, and if we would not compel him to be, at the end of twenty years, the same that he is when he goes upon the bench, we ought not to shut him out from the opportunity of having a little mature reflection occasionally upon questions of law. It may be said that these questions of law are discussed in the circuit; but I appeal to the experience of the profession if there is time at circuit, especially when you impose these heavy duties upon your circuit judges—when one circuit judge is called upon to try in the first instance every case involving principles of law and equity, in a range of country equal in extent to two senatorial districts—if there is time at circuit for that extended argument and calm deliberation which are necessary, both for the proper determination of great questions of law, and for the improvement of the mind of the judge himself. The minds of the profession, and the minds of the judges have hitherto reacted upon each other, and for myself I believe there could be nothing but disaster resulting from a provision that hereafter a circuit judge should never have the opportunity of listening to or participating in the discussion of causes where every question is committed to writing, and where opinions are formed that are fit to go upon the record and be perpetuated in the books. For this reason I am opposed to the system offered by the gentleman from Chenango [Mr. Prindle] and advocated by the gentleman from Ulster [Mr. Cooke]. In this respect I deem the proposition of the gentleman from Steuben [Mr. Spencer] infinitely superior, and I deem the proposition of the majority of the Committee on the Judiciary infinitely superior to the system proposed by the gentleman from Chenango [Mr. Prindle]. As I have already stated, we want to put our judges themselves at school. They are mere men after an election as before; an election does not make them omniscient, it simply puts them in a position where, if they have the ability to profit by the advantages presented, they will make, from time to time great advances, and I contend that the State is entitled to the advantages which the position of the judges gives them. For these reasons I regret exceedingly to see a system proposed which will deprive the judges and the State of the advantages which must necessarily be derived from the judges listening to the discussions at general term, and participating in the investigation and decision of cases there.

Mr. FERRY—It is my opinion, Mr. Chairman, that that system will be the best, at least so far as the court of review is concerned, which shall have the least number of judges, provided they be found competent to do the business of the State. I believe that two courts, confined strictly to an appellate jurisdiction, would be able to do all the business. But, in deference to what I believed to be the views of members of this Convention, I, in the plan which I had the honor to suggest, made provision for three courts, supposing that one would be located in the city of New York, another perhaps at Albany, and the third at Rochester. However, they were to be located wherever the Legislature thought proper. My reason for believing that a less number might do the business is the fact that the old court, composed of three judges, was able, previous to the adoption of the present Constitution, to transact the entire business of the State, and perhaps it may not be difficult for us to estimate the increased power for the transaction of business which one court would possess over any other one court of a numerous class, for two reasons: First, it would have greater familiarity with all classes of business, and, as I have said before in this body, a very large proportion of the business of the court arises out of questions of practice with which one court must become familiar, and if one court could have the decision of all these questions, that familiarity would enable it to make those decisions much more readily than other courts less familiar with these questions. Then, again, the less the number of our courts, the less frequently will there be conflict in decisions, and there will be a much less number of cases carried to the court of appellate jurisdiction. I believe, therefore, that the effect of this change upon the business of our courts would be such that two courts would be fully able to transact the entire business, although I have provided for three for reasons already stated. Now, the system proposed by the gentleman from Chenango [Mr. Prindle] is, in that respect, substantially the same as that of the gentleman from Ulster [Mr. Cooke]. But I prefer a system differing somewhat, in other respects, from the views of the gentleman from Ulster [Mr. Cooke]—a system which shall more completely separate the business of the courts at the circuits and at the special term from the business of the general term; and I prefer that the judges who act in the one class of cases, and who are selected to deal with that class of business only, should not be allowed to transact business in a different capacity, for reasons which have been already stated here, and which I do not now intend to elaborate. However, I regard the present as a favorable time to add my contribution to the mass of matter already submitted for our consideration, and this I can do more directly by calling attention to the plan heretofore submitted by me, and which may be found in document 121. I will first read to the Convention the three sections which embrace my views of what the supreme court should be. The first is that:

SEC. 5. There shall be a supreme court having general jurisdiction in law and equity.

§ 6. The State shall be divided into three judicial districts to be divided by county lines, and to be compact and equal in population as near as may be. There shall be five judges elected in each district by the electors thereof respectively. They shall be classified so that one of the judges shall go out of office at the end of every two years. After the expiration of their terms under

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classification, the term of the office shall be years; provision may be made by law for ...ating from time to time, one or more of ...d judges to preside at said courts, and any ...e or more of said judges may hold said courts. ...y shall have an appellate jurisdiction only. ...d judges shall reside during their entire term ...ffice at the place where their respective courts ...ll be held, and such courts shall be always ...en. The judges of said court shall have power ...appoint and remove a clerk for their courts re...pectively.

§ 7. There shall be elected in each of the ...ranches of this State, by the electors thereof, a ...stice of the supreme court, who shall hold his ...ffice for the term of eight years. He shall hold ...a court which shall have jurisdiction of, and in ...which shall be transacted, all business now done ...by circuit courts, courts of oyer and terminer, ...special terms of the supreme court, county courts ...and courts of sessions, and such justice may perform ...at chambers all such business as justices of the su...preme court and county judges now perform. He ...shall appoint and may remove a clerk of said ...court; he shall reside at the county seat where ...a court shall be held, and such court shall be ...always open. Such justice shall have jurisdiction ...to act in any county within the State, and the ...legislature may provide for the temporary ex...change or transfer of such justices, from one ...county into another.

These three sections provide for the entire judicial system, so far as it relates to the supreme court, and also to the transaction of the business that is now performed by our county judges and courts of sessions. If the plan is feasible, it must be admitted that it is more simple than any other proposed, and that it requires a less number of judges to transact the business of the State, than under any other plan which has been submitted. We now have, in each county in the State, a county judge, and we have thirty-two judges of the supreme court. My plan only provides for fifteen judges to hold three general terms, and independent of these, I only provide for the same number of judges throughout the State, that we now have as county judges. I give them, as will be seen, a jurisdiction comprising the entire business which is now performed by the courts of oyer and terminer, circuit courts, special terms of the supreme court, county courts and courts of sessions. And if a judge living at the county seat, in each county, holding open court there, can transact the business proposed, why, it is certainly all the judicial force that we need. This plan is also more simple than any other in this particular, that under it, there is no such complication arising out of numerous courts, as under the present system. The transaction of the whole judicial business of the State, above that of justices of the peace in the several towns, and the surrogates' courts in the several counties, is all comprised within these provisions, and is all to be performed in the supreme court. We have, in fact, by this plan, just one court in this State, independent of what other courts may be necessary in the cities. I will not occupy more time at present, but will leave the system to the consideration of the Convention. I ask for it a respectful examination, and if it shall be of service to any member, in arriving at the adjustment which we are ultimately to adopt as the final action of the Convention upon the subject of the judiciary of the State, I shall be satisfied.

Mr. A. J. PARKER—Without discussing at present any of these propositions, I wish merely to correct a misapprehension that may exist in regard to myself from something that was said by the gentleman from New York [Mr. Pierrepont]. He seems to suppose that all the members of the Judiciary Committee concur in the plan of that committee for the organization of a new supreme court. I, for one, sir, most certainly do not. I opposed in the committee the system as it now stands after the committee had taken out from it the principle of minority representation. I could only be induced to support any plan of organization by departments which shall include a provision which would secure minority representation. Without that I prefer the present system, and to leave the present districts as they are and the judges as they are. If we are to adopt a new one, I trust it will be one that will secure representation from both political parties. I have no doubt that the present system needs improvement. I believe it would be well if the tenure were more stable and the term of service longer, and I think all will agree that the judges should receive a larger compensation. I believe, too, that if we can have a plan by which the circuit shall be held by one class of judges who shall devote themselves entirely to that duty, and the general terms by others devoting themselves to that kind of judicial duty, it will be a great improvement; and certainly there is much merit in the plan suggested by the gentleman from Chenango [Mr. Prindle], but I doubt very much whether we shall be able to agree upon any such plan or upon any of the plans that are proposed; and as between the proposition of the committee and the present system, I shall certainly vote to sustain the present system.

Mr. PIERREPONT—I hope I was not misunderstood by the gentleman who has just taken his seat. I think I stated that after great deliberation and much diversity of opinion the members of the committee, with the exception of one, came to the conclusion to accept this report. The learned gentleman who has just taken his seat [Mr. A. J. Parker] signed this report, and I remember to have been present when it was signed, and from that fact I inferred, as I think did others, that he had concluded that it was the best we could get. Although we differed on many points during the discussion and the debates that ensued in committee, yet when the gentleman signed the report I supposed that I was justified in saying that we had all come to the conclusion to adopt that report as the best we could get.

Mr. A. J. PARKER—Mr. Chairman——

Mr. FOLGER—I rise to a point of order, that it is not in order in the discussions of this Convention to allude to the transactions of a standing committee.

The CHAIRMAN—The point of order is well taken.

Mr. A. J. PARKER—We will not allude to

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the transactions of the committee. I allude to the report as presented here. That report is presented as the result of our deliberations and so far it is truly presented. Each portion of it is the result of a vote taken upon that portion, but it by no means commits any one to the report as a whole; and such was the distinct understanding agreed upon by all who signed the report. Indeed, the report does not, in its language, imply any thing different.

Mr. HALE—I am very glad to hear the statement made by the gentleman from Albany [Mr. A. J. Parker], who has just addressed the committee. I am certainly somewhat surprised, after what occurred in the committee, when I consider the distinct understanding that was had upon the day before this report was presented to the Convention, that when any member of that committee rises here to state that the committee were not unanimous in regard to the organization of the supreme court, he should be met by what I regard as a technical objection from the chairman of the committee that it is not in order to allude here to proceedings had in the standing committee. It has been stated here by the gentleman from New York [Mr. Pierrepont] that the report of the Judiciary Committee should not be changed, that no part of that plan should be changed because there was entire unanimity in the committee upon that subject. Now, Mr. Chairman, I claim that the report as it is now here before the Committee of the Whole does not show that there was any such unanimity. It merely shows what is the fact, that by the votes of that committee taken as those votes necessarily were from time to time, and often when the committee was not full, that this was the plan adopted by the majority of the committee and is now presented by those who have signed the statement prefixed to it as the report of the majority of the committee. It is the conclusion, it is said, to which the majority of the committee have come after weeks of laborious investigation, etc. Now, it has been said upon this floor with great propriety that the votes of this Convention were not always apparently consistent with each other, for the reason that the Convention changed from time to time, that the Convention of to-day is not the Convention of last week, but is made up in part of different men. Just so it was in the committee, and I do not think I trespass upon any rule of order in saying this, because just so it must be with any committee constituted of so large a number as was this Judiciary Committee. Votes were had, plans were adopted by the committee at different times which were reversed or rejected when the committee happened at times to be constituted of different members; and I say, Mr. Chairman, with great deference to the gentleman from New York [Mr. Pierrepont] and the gentleman from New York [Mr. Daly], who addressed the committee on this subject the other day, that every member of the Judiciary Committee is entirely at liberty whenever he dissents from any measure or proposition adopted by the majority of that committee, to express his dissent upon this floor.

Mr. DALY—I beg leave to correct the gentleman from Essex [Mr. Hale.] I said nothing that I now remember upon the subject.

Mr. HALE—I may be mistaken, Mr. Chairma but I understood the gentleman from New Yo [Mr. Daly] to speak with reference to this pl and argue in its favor, as one which had be approved by all the Judiciary Committee, wi one exception. It is true, sir, that only one me ber of the committee thought it necessary make a minority report; but I would say, and think every other member of the committ would say that, while in most of its features t judiciary report was cordially concurred in by the members of the committee except the o who made the minority report, yet, on this subje of the organization of the supreme court, the was great diversity of sentiment in the committe from the commencement to the end of its labors and therefore I feel at perfect liberty to expres my dissent upon this question.

Mr. DALY—If the gentleman from Essex [Mr Hale] will permit me, I will state that the re mark which I made in regard to this matter wa in reply to a remark made by the gentleman fro Ulster [Mr. Cooke], and all I said was that there was very great unanimity in the committee on the subject of life tenure.

Mr. HALE—If that was the remark of the gentleman from New York [Mr. Daly] it was perfectly correct, one which I can very fully indorse. Upon that subject there was very great unanimity in the Judiciary Committee.

Mr. PIERREPONT—I was not aware that I had said any thing to lead any member of this Convention to suppose me to have said that any member of the Judiciary Committee was so committed to this report that he could not dissent from it; all I intended to say was that the presentation of this report by the committee was an evidence that it was the best plan we could possibly agree upon, and to argue from it that having been the subject of so much deliberation, and having received such general assent, it was worthy of a good deal of consideration from this Convention.

Mr. HALE — With the gentleman's remark on this subject, as he explains it, I certainly have no hesitation in concurring. The majority of the Judiciary Committee presented this report, and it is undoubtedly entitled to all the weight which the recommendation of that majority can command; but I think the idea that would be carried away, by those who listened to my friend's remarks, although he did not probably intend to convey that idea, was that, with the exception of the member who made the minority report, all the members of the Judiciary Committee were committed to sustain every feature of the majority report—an idea which, as the gentleman has just explained, is not correct. Now, I wish to state very briefly a few reasons why I shall support this proposition presented by the gentleman from Chenango [Mr. Prindle]. First, I think it has more unity and simplicity than any other plan proposed here, with the exception of the one which I introduced, and which was voted down the other day—for, of course, each of us is inclined to think his own plan the best. Of all the plans now pending, I say this one has in my opinion the most simplicity and unity. It proposes to elect twelve judges by the people of the

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state at large. They are to constitute the appellate branch of the supreme court, and are to be capable of acting in sections. If two departments cannot do the business of the State the court can divide into three departments of four judges each, and if from the increase of business or any other cause, four general terms are necessary, the court can divide into four general terms of three judges each, and can hold general terms in the sections of the State. The circuit judges or justices proposed by the plan of the gentleman from Chenango [Mr. Prindle], will be elected by the electors of the respective districts, and they are to have power to perform all the duties pertaining to a supreme court judge, except to sit at general term. It may be that the plan provides for a greater number of justices or circuit judges than is necessary, but that is a matter of detail which can be easily modified if it is thought best The system is a flexible one. As I said before, it permits either three or four general terms. It also permits these judges, if they choose, to come together in one term as often as may be necessary to reconcile conflicting views and to establish precedents which shall be of equal authority throughout the entire State. I think the tendency of such a system would be to diminish a great evil which has often been spoken of upon this floor—the immense number of reports. The number of reports in this State was regarded as very large in 1846, when, after sixty or seventy years of judicial life, we had only one hundred and twelve reports; but now, after twenty additional years, we have over one hundred and seventy additional reports. I think the system proposed by the gentleman from Chenango [Mr. Prindle] would do a great deal to obviate that difficulty. Under it only the decisions of the general terms would probably be reported, and we should have but twelve judges sitting at general term instead of thirty-six, as we have now. This is a system, too, which can be adapted to any mode of selecting judges. Some gentlemen are anxious to retain in their office the present justices of the supreme court. If it be determined to do that it can be done with the greatest ease under this system. One justice of the supreme court in each district who has the longest time to serve can be put upon the State bench, the people electing a sufficient number in addition to make up twelve, and the residue made circuit judges; or if the Convention prefer, as it was evident it did in the case of the court of appeals, the system by which the minority shall be represented upon the bench, they can carry out that system by providing that each elector shall vote for only eight or nine judges on the State bench, and each elector in each district shall vote for only two justices. Now, there are some objections to this system, and I will speak of them very briefly. The first is that the judges will become tyrannical, and that from their non-familiarity with circuit duty, they will be too technical upon the appellate bench. I answer by saying that, in most instances, undoubtedly, the State justices would be selected from men who had had experience as judges at circuit, and that that would be the case is evident from the fact that, under our present system, the men elected to the court of appeals are generally those who have had experience as circuit judges, or at least men who have had great experience as lawyers; and I would further answer that objection by asking gentlemen upon this floor, are the decisions of the court reported in Wendell, Hill and Denio any less valuable than those of judges, under the present system, who have had the benefit of both special and general term experience, which we find in the forty-seven volumes of Barbour; whether the profession could as well afford to part with the reports of Hill, Wendell and Denio as with the reports of Barbour? Another objection to this system is that it will tend to centralization. There is no necessity for that. We can provide that general terms shall be held by the judges as now in every district of the State, and there will be no more inconvenience to lawyers than there is now. For these reasons, Mr. Chairman, briefly expressed, and for many others which a full examination of the question, I think, would present, I am decidedly in favor of the substitute of the gentleman from Chenango [Mr. Prindle].

Mr. COMSTOCK—I would inquire of the Chair whether, if the proposition of the gentleman from Chenango [Mr. Prindle] be accepted, it will take the place of the plan proposed by the gentleman from Steuben [Mr. Spencer], the existing system?

The CHAIRMAN—That will be the effect.

Mr. COMSTOCK—Leaving the question still open between this plan recommended in the report of the committee?

The CHAIRMAN—Yes.

Mr. PRINDLE—I ask to have my proposition read.

The SECRETARY again read the substitute offered by Mr. Prindle.

Mr. A. J. PARKER—Is an amendment now in order?

The CHAIRMAN—An amendment is not now in order, there being two amendments already pending.

Mr. PRINDLE—I would suggest to the committee that, if those who believe in the system of separating the functions of judges at circuit and judges in banc, will vote for this proposition, it can subsequently be amended as the committee think best.

Mr. A. J. PARKER—I wish to make a suggestion to my friend from Chenango [Mr. Prindle]. I think that two justices in each district are abundantly competent to hold all the circuits, when they have no general term duty to do, and that they will still have a good deal of leisure during the year.

Mr. PRINDLE—I would inquire of the gentleman how many he would prescribe for New York.

Mr. A. J. PARKER—Oh, New York would require more; I only spoke of the other districts.

Mr. EVARTS—As I understand this proposition it provides for forty judges of the supreme court.

Mr. PRINDLE—Three in each district and five in New York.

Mr. EVARTS—Three judges in each of the

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seven districts—twenty-one; five in New York—twenty-six, and twelve in banc—that is thirty-eight in all.

Mr. PRINDLE—Yes, sir.

Mr. EVARTS—Is there any provision in this scheme as now presented to be voted for, that determines what the constituency of election is to be, whether it is to be local for all of the judges

Mr. PRINDLE—The question of their election is left for future provision.

Mr. EVARTS—The constituency is left undetermined, whether they are to be elected for the State at large, in departments, or in districts?

Mr. PRINDLE—Yes. My purpose in doing that was, to combine if possible all the friends of this system, leaving the details to be determined afterward. If it is thought that two justices of the supreme court can hold the circuits, I am willing to accept that amendment.

The CHAIRMAN—The proposition will be so amended if the gentleman from Chenango accepts the amendment.

Mr. PRINDLE—Or it can be left to be modified afterward, or left in the power of the Legislature.

Mr. COMSTOCK—I would place the number at two, with the power in the Legislature to increase it, if the public good should require it.

Mr. PRINDLE—I will consent to that.

Mr. BICKFORD—I rise merely to inquire what would be the effect of an affirmative vote in favor of this proposition of the gentleman from Chenango [Mr. Prindle], whether it would supersede the proposition of the gentleman from Steuben [Mr. Spencer]?

The CHAIRMAN—An affirmative vote would substitute this for the proposition of the gentleman from Steuben [Mr. Spencer], leaving the committee still to vote for the proposition of the gentleman from Steuben [Mr. Spencer], as amended by the substitue.

Mr. E. A. BROWN—For one sir, I am decidedly opposed to this scheme of dividing the judges of the supreme court into judges who hold general terms only, and other judges who hold circuits and special terms only. It is to some extent a return to the judiciary system framed under the Constitution of 1821; but as I understand this proposition, it even goes beyond the provisions of that system. As I understand, it prevents either of the judges of the supreme court from holding circuits or special terms, or transacting the ordinary business of a justice of the supreme court, under any circumstances. Instead of being a scheme furnishing to the people of the State increased facilities and instrumentalities for the transaction of their judicial business, it gives them judges restricted in their jurisdiction and restricted in their powers, so that the people who have business to transact cannot rely upon any of these twelve to do it for them, but must go elsewhere, to some point perhaps far distant from where the attorney or the party lives, to find a judge that may grant an injunction or an order, or to do any business of that character. Now, sir, if the interests of the people of the State are to be in any degree regarded, instead of the interests of the individuals to be put upon the bench, and to be given a tenure of office not only for eight years but un they become seventy years of age, it seems me that some consideration may be given to t existing system. It has been shown by the hi tory of the last twenty years that notwithstan ing the great number of new questions that ha arisen under new acts of the Legislature, und new provisions of the Constitution, under a ne system of practice—

The hour of two o'clock having arrived, th PRESIDENT resumed the chair and the Conve tion took a recess until seven o'clock P. M.

EVENING SESSION.

The Convention re-assembled at seven o'clock and again resolved itself into a Committee of th Whole on the report of the Standing Commit tee on the Judiciary, Mr. C. C. DWIGHT, of Cayuga, in the chair.

The CHAIRMAN stated the pending question to be on the amendment proposed by Mr. Prindle, on which the gentleman from Lewis [Mr. E. A. Brown] was entitled to the floor.

Mr. E. A. BROWN—Mr. Chairman, the proposition of the gentleman from Chenango [Mr. Prindle] to organize a supreme court in such form as to have a portion of the judges assigned exclusively to the discharge of the duties of general term, and another portion assigned exclusively to the holding of circuits, special terms, and courts of oyer and terminer, is, in my judgment, unwise, inexpedient, and not called for by any consideration of public interest whatever. It has been admitted upon this floor that the judiciary system that existed in this State previous to 1821 was, in this respect, certainly, if not generally, unobjectionable. Whatever fault was found with the judges of the supreme court then existing, had relation to their connection to the legislative department of the government, as members of the council of revision, and not to their services as judicial officers simply. It is conceded that the reported decisions of that court commanded the respect, not only of this State, but of the United States, and of foreign countries; and complaint is made that the present judiciary system does not afford a series of reports of such high standing and character as those of that court. I say that the experience of forty-four years of the supreme court, under the Constitution of 1777, afforded no ground of complaint as to this particular characteristic of that court, that is, the holding of circuits, presiding in courts of criminal jurisdiction, and also in banc, and so far as it was necessary, that the judge should sit in review of his own decisions made at circuit or at oyer and terminer. We have in the constitution of the court of the United States the same feature, and this court has been highly spoken of on this floor, as it deserves to be, and the judges of that court are not confined, in the discharge of judicial duty, to sitting in banc or sitting in review of decisions of other and inferior courts, but all the judges of that court sit upon the trial of issues in the different circuits to which they are assigned; and it is not found by experience in that court that those duties are inconsistent with each other, or that it has any tendency to lower

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the character, the dignity, the standing or usefulness of that court; and so I might go on and repeat the same statement as to the courts of the different States, the court of common pleas and the queen's bench in England, where these two different kinds of services are combined in the same court. It was not an advantage to the judiciary of this State that there was a change made in 1821, which continued for twenty-five years, where one supreme court was organized, consisting of three justices, whose duties required them mainly to sit in banc and sit in review of decisions made at circuit by another class of judges. Whatever may be said in regard to the usefulness of that court, or the series of courts existing in this State from 1822 up to 1847, it cannot be said that this change inaugurating circuits, inaugurating vice-chancellors' courts, both to be held separately by a distinct class of judges, and organizing a supreme court, whose judges were confined to holding the general terms and special terms for motions only, it cannot be said that that was of any material advantage to the people of this State. On the contrary, it worked great disadvantage. It is true that the population of the State, the business of the State, largely increased from 1821 to 1827. In 1821, courts, as then organized, practically discharged all the duties that devolved upon them. There was no great complaint of delays in the supreme court, none at all in the court of chancery, very little, if any, in the court for the correction of errors. But this change was made in the supreme court. The duties that had devolved formerly upon the court of chancery and the supreme court were changed. The court of chancery was materially modified by the addition of vice-chancellors, and the supreme court proper was changed, and the duties separated and divided, and one class of judges appointed exclusively for the purpose of holding circuits, and presiding at oyer and terminer, and the other part to hold general terms mainly. Was any thing gained in that respect by the people of this State? The court of chancery, I believe, in 1847 had about a thousand causes undecided upon the calendar. The supreme court had about six hundred, and the court of errors a considerable number, I do not know how many — from a hundred to two hundred. Under that system the business of the State fell in arrear, litigants were delayed, those seeking justice were put off, and if a cause was carried to the supreme court proper, it lay there for three years—from two to three years. I believe it was shown the other day to be three years before a hearing could be had in the regular order of the calendar. Unless justice is speedy, unless a decision can be had within a reasonable time, certain injury results to all parties concerned. I say that this change, instead of working any benefit whatever, worked mischief, and only mischief in this respect. What occurred in 1847 under the change that was made? This reconstruction of the supreme court. It is objected that the court was divided into eight districts, or the State divided into eight districts, and that we have eight separate courts. As I said the other day, that is because the State of New York is a great State. It is eight times as large, and twenty times as large, in respect to its population and business, as some other States, and the idea of going back to a system which shall compel all the litigation in the supreme court which is appealed from the special terms, from the circuits, and from the oyer and terminer to the general terms of the supreme court—the idea, I say, of passing all that business through one court, is as impossible as to force all the waters of the North river through an augur hole. It cannot be done. It is impossible. In 1822 there was a population of about one million four hundred thousand in the State and in the city of New York, and I will allude to that in this connection. In the city of New York there were perhaps one hundred and twenty five thousand at that time. The courts as then organized, as I said, were able substantially to keep up. The increase from that time up to 1840 was very great—the population then nearly two million five hundred thousand in the State, and three hundred and twelve thousand in the city. Business increased accordingly. Gentlemen complain that appeals to the court of appeals are more numerous now than formerly, and some sort of scheme is to be devised, if we are to credit the arguments of the gentlemen, by which appeals are to be diminished. You cannot diminish the people of the State of New York very well. You cannot very well diminish their business, their activity and energy. The objection might as well be made that more mowing machines are sold and used now than there were in 1846 or 1850; there is greater pressure upon the manufacturers of these articles; that more sewing machines are made and used now than there were twenty years ago—more railroads, steamboats and canals, the use of all which lead to litigation. The increase of population and the multiplication of business necessarily results in the increase of litigation, and the increase of appeals from inferior to superior courts. It is urged that if we diminish the number of districts or the number of general terms in the State from eight to three, we diminish the number of appeals. Does that follow as a matter of course? It follows if the business is obstructed in the supreme court, so that you cannot get through the supreme court, and those who desire to go to the court of last resort can have the opportunity to do so. If appeals to the court of appeals are to be diminished by throwing obstructions in the way of litigants who desire to go to that court, then I admit that this scheme of the gentleman from Chenango [Mr. Prindle] will have the effect to diminish appeals from the supreme court to the court of appeals, because it will obstruct decisions in the supreme court to such an extent that diminution must necessarily follow.

Mr. PRINDLE — Does the gentleman think that four general terms, with no other business except sitting in general terms, could not do the business that comes from the circuit?

Mr. E. A. BROWN—I think I shall answer the gentleman as I proceed. The gentleman desires to separate these two functions, to create, as he says, four general terms. I understand him to provide for three courts, and I suppose they will

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hold as many general terms as they please or as the law may provide for.

Mr. PRINDLE—The proposition provides for twelve judges, any three of whom, or more, may hold general terms.

Mr. E. A. BROWN—My conclusion upon that subject, and I do not propose to argue it to any great extent, is this, that whereas, with less population, less business, less litigation in the State of New York altogether, we had but one court to hear these appellate causes, and which was unable to discharge the business of the court, and in the course of twenty-five years business accumulated so that litigants were delayed three years—now, with twice or three times the business we change that system by creating instead of one, three such courts to transact the business. But the population of this State is not to stand still. The business of this State is not to die out. The world is not coming to an end; and the result, I claim, will be that those courts will very soon be delaying the litigants in this State, and obstructing the business, from the very nature of things, from the constitution of the court which he proposes, aside from the other objections that are made to separating the different functions of these judges. What is to be gained by it? The gentleman says there are differences of decision, contradicting decisions made in the eight different districts, and it is said there are eight separate courts, that the court in one district pays no respect to the decisions of the court in another district. Now, I respectfully dissent from this as a matter of fact. I have always understood, and never heard it controverted until I heard it controverted on this floor, that it was common—not universally true, but common—for the general term in one district to pay great respect to the decisions previously made in another district upon the same point, that they usually follow that decision, that they dissent from it or decide different from it only when they conceive that the first court had committed a great error; and I ask, if there is any objection to having contradictory decisions when the first decision is an erroneous one? I mentioned an instance the other day of Chancellor Kent, who overruled his own decision in open court, and said that he was satisfied he was wrong the year before. I say it is common, it is usual for the general terms in one district to pay respectful consideration to the previous decision of another district. But how would it be if you held three courts, twelve judges elected and three of them to hold general terms? I would like to know if there is not the same opportunity in deciding the same number of appeals from inferior courts, for these three, the one to disagree with the other? They cannot decide three ways; they cannot decide very well more than two ways, and I think it would be just as likely for one of these courts to decide against the other as in the other instance. But suppose they do in either case, what is the great mischief of it? One may be right and the other wrong. Suppose one term that has the first consideration of a question growing out of a law that is passed in pursuance of a provision of the Constitution upon which we are now engaged. The first time the question comes up the general term in one district decides one way. It is a new question; it has not had very extensive examination or full consideration, and they decide it, perhaps, without sufficient consideration. They decide it wrong, if you please. I would like to know if they are to insist everlastingly upon that decision? I would like to know if it is the practice in this country or any country for a court under such circumstances to be bound absolutely by such decision? It goes before another court, the superior court of New York, the superior court of Buffalo, or the common pleas of New York; what is the difficulty about deciding it the other way if they, on further consideration, more careful examination and more thorough discussion of the question, come to an opposite conclusion? You have provided the court of appeals for the very purpose of settling the law in that case, as in all cases of controversy. Limit appeals? One gentleman says that he looks over the reports and he finds this decision one way and that the other way, and he is greatly embarrassed in advising his clients. It reminds me of the saying of a very good lawyer in regard to a decision that had been made. He did not know but that was the decision of the court, but if it was it was not the *law;* and I take it that a counselor who is called upon to decide the law should take into consideration all the decisions that he sees, and then advise his client, according to his best judgment, as to what the true construction of the law should be. It is notorious that one court differs with itself from time to time, from generation to generation, as well as one court from another court. I say that you gain nothing in respect to uniformity of decision by the proposed scheme over what the existing court affords—nothing practical. There is one thing that you lose. There is one disadvantage growing out of it in addition to what I have named, and that is this: you change your system. It is not very important what the precise form of proceedings is always; it is not very important precisely how many judges you have, but it is important that the system of practice should be in some degree uniform and well understood. How many difficulties have grown out of, how much litigation, how many errors, how many decisions, and how many books have been published in consequence of the change in the practice of the court by the Constitution of 1846 and the laws passed in pursuance of it. And how many more books, how much more litigation would be required to settle the new system of practice, no better than that we have, but, being a change, controversies, differences of interpretation of statute, of rules and of practice will be constant and continued from year to year, and I think that is just as bad as conflict of opinion between two different general terms of the supreme court. I think the proposed amendment renders the judiciary system complicated and uncertain, unnecessarily so, and you gain nothing by this change. I said that these various courts under the Constitution of 1821 allowed the business to accumulate—necessarily so. It could not be helped, I say, that in the courts that now exist under the Constitution of 1846 this business has

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ven cleared off. You have got rid of some two ndred and fifty county judges. You have got d of some two hundred and fifty or three hundred sters in chancery, and I don't know but as ny examiners and quite a number of supreme rt commissioners, who entered into and formed rt and parcel of the administration of justice der the previous Constitution. You get rid of that, and the court as at present organized charges the duty fully and keeps up with the siness of all the courts, the old supreme court, e court of chancery, the vice-chancellors, and rts of common pleas. They have taken in and charged all the business that devolved upon ese various courts and these various officers; d I say that under this proposed change you ave no assurance that they can accomplish any ch thing, because the twelve judges that are proposed to be elected as judges of the supreme urt, to hold general terms only, do nothing else whatever, and the parties who are seeking the services of a judge, a mandamus, an injunction, or ny thing of that sort, have got a smaller number judges to resort to and a greater distance to go. You are removing the administration justice further from the people. And nother objection, to my mind. You organize these three general terms in different parts of the State, you will have one in the ity of New York, say another in the city of Albany, and the other in the city of Syracuse or Rochester, as you please. They do not attend the circuits. They attend simply to appellate usiness, and they very soon get into some old rut, whether right or wrong, and they get some sort of a system of decision, right or wrong. I assume that they will be right generally. I notice, too, that there will be two or three lawyers in each place, whose voices they can hear and whose arguments they can understand and appreciate, but when any other counselor appears before them they do not understand him. His voice sounds harshly upon their ears. They will be afraid that he is attempting to get them out of some old rut in which they have been traveling year after year. It is useful to all these men to mingle with the people of the State; to hear all of the various questions that come up at the circuits as well as at general term, and special term; to hear them discussed and to take part in their decision. And I say litigants and parties will suffer by having the business removed from their locality. I will not take up any more time upon that particular subject, but there is another point in regard to this question of the supreme court that has been alluded to, in relation to which I desire to say a few words. If we retain substantially the present system, I presume that we are to retain substantially the present system of election of the judges of the supreme court. Because this committee of the whole has framed an article in relation to the court of appeals providing for the tenure of office to be fourteen years and not allowing a re-election, it does not follow that that scheme is to be applied to the supreme court. Gentlemen argue here that, theoretically, it is unjust to a man who is put upon the bench ever to allow him to go off, whether he is elected for one year, or it is unjust to elect him for one year, or eight years, or ten years, or fourteen years; but he should be elected until he is seventy, and then he will feel comfortable on the bench. He will feel entirely independent of the people. To be sure he ought to regard public opinion, but he is entirely independent of the people and of every body else. It is admitted that the system that we have lived under for the last twenty years has worked well, certainly in seven of the eight districts; that the people have secured the services of very respectable judges, capable and honest men, and they have been re-elected many times. In our own district four of those judges have been re-elected without opposition. In two of the districts judges have been elected and re-elected and are now in office, who were first elected in 1847. I do not know whether they are seventy years of age or not. Has it ever been alleged in regard to any of these, that they have failed in the discharge of duty, or have demeaned themselves improperly upon the bench, or that they have attempted improperly to influence the people in regard to their re-election? Is there, has there been, any difficulty about that? It is said it will be hard for these men, after serving eight or fourteen years, to go back to the walks of professional business or private life. That may be so; but in this country we have no grades of society that makes it illegal or improper, in a social point of view, for a man who has been a judge to go back to his profession. Practically, there would be no particular difficulty about it. Most eminent men who have been on the bench have become subsequently eminent as counselors. This is an active country, it is a live country. Men may serve one year, or five years, or ten years on the bench, and then they can work on a farm, or practice law; and they do not by so doing, lose their social position or standing in the community. There is no such class or caste in this country as to disqualify a man, make it degrading for him to do these things after he has served acceptably as a judge. It is said that judges have failed to be re-elected in some cases because political parties change, and in other cases because the machinery of the party is so worked that the judge is not renominated and re-elected. That is so, undoubtedly; but does it follow that when the change comes that the new man is not just as good for the position as the old one? Does it not sometimes follow that an improvement is made in that respect, and just as often an improvement as the contrary? And I apply the remark of the honorable gentleman from New York [Mr. Pierrepont] —in case the judge so demeans himself on the bench that when his time is about to expire that it can be said of him that he can decide against his friend or in favor of his enemy, if his duty requires him so to do; that while on the bench he is not known to have done one thing but what at the time he believed to be right, proper and honest. I say if the judge so demeans himself, and he has an inducement so to demean himself, as to satisfy the public that he deserves a re-election, the people somehow have a way to find this out, and ascertain the fact that he merits a re-election, and if he really deserves it they will give it to him. This is not a universal rule, to be sure, nor is any other proposition to be

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made here upon this subject of universal application. It is a general proposition—every man on the bench who shows himself worthy, and desires it, may be re-elected. Of course the facts may be such that public opinion will call upon the dominant party to change this officer, as well as the incumbent of any other important office.

Mr. BAKER—I infer from the remarks made by the gentleman who has preceded me [Mr. E. A. Brown], and others who have participated in the debate upon this question, that one of the complaints made by the people against the present judiciary system is, that of the judges reviewing their own decisions, and the action of the committee upon one of the sections we have adopted, has provided that no judge of the court of appeals or supreme court shall sit in review of a case on which he has given his vote. Now, if we can construct a court under the section providing for a supreme court, in which the *nisi prius* judge is divorced and separated entirely from reviewing in any way, directly or indirectly any case that he has given his vote upon, I take it that we have provided for that difficulty. But it seems to me in the report of the Committee on the Judiciary that they do not practically provide for the absolute separation of the circuit court judge who tried the case, from sitting, to some extent, in review of his own decisions. As was remarked by the gentleman from Ulster [Mr. Cooke], the bench of judges are collected together at general term; the cause is called up, and perhaps the presiding judge announces to his brethren on the bench that he tried that case at circuit. He takes his seat upon the floor; the other judges hear the case. The next case that is called on, perhaps another judge has to make the same announcement to his brethren upon the bench—that he has participated in, or that he decided that case at the circuit or special term. When they go into consultation, when they come to write out their opinions, compare them, and get the votes, the question must occur, in almost every instance: "Why, Brother A., or B., I have just been looking over your decision and I feel constrained to vote against you, to overrule your opinion given at the circuit"

Mr. E. A. BROWN—In connection with these remarks I desire to call attention to what I intended to say in relation to the former practice of the court of errors, when it was provided that the chancellor, on an appeal, was not allowed to vote, but he was required to furnish the reasons for his decision in each particular case. So in regard to judges of the supreme court. When a case was brought to the court of errors, from the supreme court, they were not at liberty to vote in the court of errors, but they were required to furnish the court of last resort with the reasons which governed their decision.

Mr. BAKER—That is true; but, as I remarked, this Convention had come to the conclusion to separate or divorce the votes of the trial judge from the reviewing court. Having come to that conclusion, it seems to me rational to carry out the rule. They should complete the separation, not in one section declare that no judge shall sit in review of his own decision, and then in another section allow him at least to sit or be present to hear the comments and criticisms of counsel and the views and opinions of his brethren in overruling him. It requires no very great amount of ingenuity to discover what the effect would be at general term where one judge was writing down and overruling the opinion of another judge on the same bench. It would lead to criticisms, strictures and animadversions upon each other. It seems to me that that would not conduce to harmony in feeling or unity in decision. The better way would be, if this Convention comes to the conclusion to effect a divorce, to do it absolutely and effectually—in fact, by an explicit provision in the section organizing this court. And the section under consideration seems to be framed in such a way that all the evils growing out of the present system are retained. While another clause we have adopted in the Constitution says he shall not vote upon any case he has decided at circuit or special term, yet his influence will and must be felt in the decision of his brethren, though he may not participate in giving that decision. And that is one of the evils which the Convention is attempting to remedy and upon which it is nearly unanimous.

Mr. WAKEMAN—Allow me to make a suggestion as to the question here whether or not the judge, who is placed upon the supreme court bench, would not in his decision, and the opinion he should form, make it a point to decide the case as he believed to be according to the law of the land, rather than to undertake to favor another judge; for it must be remembered that every judge who overrules a decision at circuit must give his reasons for so doing on paper, and they are often published in the books. Is it not his desire to stand right with regard to the law rather than to favor a brother judge?

Mr. BAKER—Before I close my remarks I apprehend the question will be answered. I think the remarks I design to make will answer that question when I come to another branch of the question. Now, I wish, if it be the will of this Convention, to separate the *nisi prius* judge from the reviewing judge, it should be done effectually, fairly and honestly, so that the plan is carried out absolutely under this section in good faith. If, as it will appear by reference to the section providing for the construction of this court, the Constitution places it out of the power of the Legislature to prohibit or prevent any judge from sitting at *nisi prius* in any county in the State, and they can hold the circuit in any county in the State, and the Legislature would have no power to prohibit or prevent it, it would often arise, where judges who held circuits and have to sit in the same court where their decisions would come under review and subject to the criticism of counsel and of their brethren. I leave it for the members of this Convention to reflect whether that would produce any effect upon the several members of the bench, though not having the right to give a vote on the question under the consideration of the court. Mr. Chairman, there is another evil which I infer from the remarks made by almost every delegate in the Convention who has preceded me, is felt not only by the judges and the members of the profession, but the people at large. It is an evil that pervades the whole State, and

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every court, and every branch of the judiciary and ramification of business in the State, and that is, the conflict of decisions that have grown up under the judiciary system of the Constitution of 1846. There is, I am aware, a diversity of opinion in this Convention, whether it be an evil. There are gentlemen in this Convention who think that it is rather a benefit to have conflicting decisions, and multiplicity of decisions, and printed reports, merely for the purpose of enabling them to make briefs; so that they may have the benefit of opposing views and conclusions to which different judges have come, to enable them to arrive at a just conclusion of what the law of the State is. Let us, for a moment, see whether that benefit which arises to the members of the profession is to outweigh the evils which it inflicts upon the people of this great State. There are some questions which occur to me of conflict of decisions of the courts of this State. I mean the supreme court; and how I find it to work in our system I will state. Take the question of the opinion of witnesses not experts. We had supposed, way back prior to 1846, that there was a tolerably well settled rule upon that question, but since that time the supreme court of the State of New York has, so far as it has had the power, unsettled that principle entirely, and the evil is felt at the door of every man in the State. In every court, every police, justices' and county court, and all inferior courts, and courts of concurrent and equal jurisdiction, and in the supreme court itself, it might be of some benefit to a member of the profession, in making up his brief, to argue a question on the exclusion or the admission of evidence, as to the opinion of witnesses that were not experts, it might be of some little or trivial benefit to a member of the profession. But look at the immense evil that it carries home to the pockets and business interests of the people everywhere in this great State. Every man's property or business is affected by that question. In the case of Clark v. Brockway, (21 Barbour, 331), an action was brought to recover damages for carelessly threshing a quantity of wheat. A witness was called who was conversant with the situation of the wheat, who had examined the straw after it was threshed, who had informed himself as to all the facts of the manner and mode in which the wheat was threshed. The question was put to him at a justice's court, from the examination that he had made of the quantity of wheat that was left in the straw after the threshing was finished, how much would be the loss to the owner of the wheat by the threshing of six hundred and forty eight bushels? Objection being made to the question on the ground that it called for the opinion of the witness, and that he not being an expert could not give an opinion, the objection was overruled and exceptions taken by defendant. The case went to the county court and from the county court to the supreme court of the State in the eighth district. Judge Marvin giving the opinion of the court and deciding that the evidence was improper, and that the opinion of the witness could not be given in such a case he not being an expert. Let us see how it affected the people of the eighth district. A competent witness might stand by and see the land or property of another destroyed in his sight, and yet could not state to the jury in his judgment how much of the property had been lost or destroyed, because he could not measure to a kernel of grain or weigh to a pound the precise amount wasted or destroyed. Although he was the most competent man in the world to speak to that point, he having been present and seen all the facts about it and knew better than any other human being could know the extent of the injury and amount of loss, yet it was held by the court that he could not give his opinion on the ground that none but experts could give opinions, substantially holding that carelessly threshing wheat by which some of it was wasted and lost was a question of science or skill. Now, I ask, notwithstanding the remarks of the gentleman from Lewis [Mr. E. A. Brown] and other gentlemen who have preceded me on that point, whether that decision constituted or should not have constituted the law for all inferior courts not only in that district but over the whole State as well as the supreme court in that and all the other districts. And yet, if the doctrine promulgated upon this floor be correct, any justice of the peace even could overrule the court of appeals decision because, they say, it is not the law of the land. Very well, if that constituted the law of the land for the eighth district.

Mr. M. I. TOWNSEND—If such a decision as that was wrong, would it not be equally mischievous if the court that made it was the only court there was in this State?

Mr. BAKER—I shall answer that objection before I sit down. My answer will be embraced in the remarks that I am about to make. If the gentleman will follow me out in the remarks I intend to make he will see how I shall answer that question. I say that that decision of the supreme court in the eight district constituted, or should have constituted, the law of that district for every inferior court therein. Still, if the doctrine of some of the members of this Convention be correct, it might be utterly disregarded and a county judge or even a justice of the peace might overrule the decision of the supreme court.

Mr. E. A. BROWN—If the gentleman alludes to me he misunderstood me. I made no such statement.

Mr. BAKER—If I have misstated the gentleman I did not intend to do so, and do not wish to misconstrue him.

Mr. E. A. BROWN—On the contrary I maintained that the law once laid down by a general term should be the law in every district, unless shown to be clearly erroneous, until otherwise determined by the court of appeals.

Mr. BAKER—Very well. We do not disagree then about the principle I am contending for, and if the gentleman will ask fewer questions we shall get along much better and have fewer misunderstandings and he can make the best of what I have to say. That decision was made in 1856. Then, in 1861, in the case of Nellis *v.* McCarn reported in 35 Barbour, page 115, an action to recover damages for an injury done to the plaintiff's growing oats, committed by the cattle of the defendant, the same question precisely in principle was put to a witness in the justice's court in which the suit

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was pending, and the justice allowed it to be law, thus actually overruling the decision in the case of Cook *v.* Brockway. So that it happened that a justice of the peace in Montgomery county exercised the right of overruling, in 1861, a decision of the supreme court, in full bench, rendered in the eighth district in 1856! The case was carried to the county court of Montgomery county, and from thence to the supreme court in the fourth district, and was there decided by Judge Bockes, who prepared and gave the opinion of the court, in which he held that the question was proper. In the one court of the eighth district it was held that a question of that kind calling for an opinion as to the amount or quantity or value in damages occasioned by an injury to or destruction of property committed by cattle was improper, and in the other court in the fourth district holding that it was proper; and each court wrote an able opinion upon the question. Now, it is not the province of this Convention to decide which was right, though I apprehend we could come just as near the true rule as those two courts did, because we could not take more than two sides to the question; but it is our duty to provide a remedy in the organic law that will hinder and prevent such things occurring. That is our province and our duty. Then, again, in 1862, in the case of Harpending *v.* Shoemaker, reported in 37 Barbour, 270, an action was brought for damages occasioned by waste in threshing a quantity of buckwheat. The witness had examined the buckwheat straw, immediately after it was threshed (the same as in the case of the wheat straw in Cook *v.* Brockway), in order to ascertain how much buckwheat was left in the straw and wasted in consequence of imperfect and careless threshing. And in that case the court held that the opinion of a witness not an expert as to the quantity wasted, was proper, sustaining the decision in the fourth district, given by Judge Bockes, and that the opinion of a non-professional witness or a non-expert, in such a case, could be given. This decision in Harpending *v.* Shoemaker was in the seventh district, and sustained the case of Nellis *v.* McCarn. Then, in 1865, in the case of Armstrong *v.* Smith reported in 44 Barbour, 120, the action was brought for injury done by the defendant's cattle to the plaintiff's growing crops, consisting of hops, grass, oats and wheat, in which Judge Balcom, in the sixth district, overruled, in just so many words, the decisions in the eighth and fourth districts. Now, sir, gentlemen undertake to say and tell the members of this Convention (although I apprehend they will tell the people of this State with very little effect) that it is no injury to the people of this State to have such conflicting decisions. In the fourth district we have respect for the decisions of our supreme court, and feel bound to follow them as declared in that district, and yet my friend from Herkimer [Mr. Graves], who resides in the fifth district, may feel more respect for the law as promulgated in the sixth district, than as declared in the fourth, and as he and I live in adjoining districts, and so near to the dividing line that we must cross into each other's territory, how are we to determine what the law is in his district, neutral ground, where the general term of his district has not pronounced what the law is therein? He, as a counselor at law, or even any justice of the peace in his district, might, with propriety, set himself up as the judge of the law there, and overrule the decisions of the supreme court, as pronounced in any of the districts I have mentioned, because the court of last resort for these cases has, in the fourth and seventh districts decided the law one way, and in the sixth and eighth districts another way, leaving the profession, business men, and all courts of all grades inferior to the supreme court, and even that court, to grope their way in the dark as to what the rule of law is upon that question. I happen to know a case, sir, and I presume other gentlemen in this Convention who have been in the practice must also have known cases, where an action was brought, after one of these decisions was promulgated, and the counsel prosecuting the action brought into court one of these decisions, and relying upon and urged it as the law of the land; and it was acted upon as such by the magistrate, in his favor, until his adversary got up and read the law as decided in another district of the same court, when the tables were turned at once by a change in the opinion of the justice, thus rendering the law, as administered under the decisons of the supreme court, a snare and delusion to the suitor and his counsel, and even the court. And yet we are told that no great evils result from conflicting decisions of this court, though it has rendered the law as uncertain as the fleeting clouds that are passing over our heads, as unstable as a puff of smoke, and as fluctuating as the tide — that it is no evil to the people of the State, this conflict in the decisions of their courts! It may not be to the lawyer anxious to increase his business in these trials of legal legerdemain, where impudence and assurance are more valuable qualities than a knowledge of the principles and maxims of the law; but to the people who want certainty and stability, it is no light tax, either upon their pockets or their patience. Sir, in my judgment, it is to the commonwealth an unmitigated evil, costing the people millions of unnecessary expense, and producing, in the administration of justice, a state of actual barbarism. The arbitrary will of the presiding judge for the time being is the law of the land, to be treated with contempt and disrespect, and overruled by his co temporary or successor, in the same court, and disregarded by the inferior courts and magistrates. The maxim of *stare decicis* seems to be entirely obliterated from the jurisprudence of the State, and to have become obsolete in the learning of the bench. It is useless for us to condemn the supreme court for these conflicting opinions it is but the result of the defective organism of that court under the present Constitution. Divided into eight independent and isolated tribunals, each charged with co-ordinate duties, jurisdiction and functions, conflict must be the inevitable result, and uncertainty and fluctuation the product of that conflict. We are convened here to remedy this organic defect of our present system; and if we desire consistency, uniformity and stability in our laws and jurisprudence

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we must here so recreate this court that conflict is impossible, and we should remember that we are charged with the great duty of making a Constitution and creating courts for the people, and not solely for the legal profession. The question of conflict of decision does not end here. You may take the question under the married woman's act of 1848, as amended in 1849, as to what are the rights of the husband under that law, and you will find that the decisions of the supreme court are in conflict. So that to-day, so far as the judicial construction of those statutes is concerned there is not a lawyer in the State who can tell what the courts have decided or what the law is as declared by them. Is it not an evil that the people do not know the law? What will any of you who do not think that conflict in the decisions is an evil, when called upon as a counselor, tell your client when he comes to your office and asks you to draw his or her will, and demands of you the true judicial construction of that law? Where do you stand as a professional adviser? If you are an honest man and give a faithful statement of the truth, you must tell your client that the law on the subject is in such intricacy, confusion and conflict, that you do not know what it is; and that you cannot tell, in framing a will or other instrument, whether your will or document will hit the law as it is or not, or whether the law will hit your will or document right or not. In the case of Blood *v.* Humphrey, reported in 17 Barbour, 660, where a husband brought an action to recover the lands of his deceased wife, to which she had acquired title subsequent to the acts of 1848 and 1849, against her grantee (she having conveyed the lands), it was held at general term of the supreme court in the sixth district, "that a conveyance by her defeated the right of her husband as tenant by the curtesy." Again, in the case of Sleight *v.* Read, reported in 18 Barbour, 159, where the proceeding was an application by judgment creditors of the husbands of two married women, who had acquired title by descent from their father of real property, subsequent to the acts of 1848 and 1849, to have the surplus moneys arising from the sale of the property on foreclosure of a mortgage given by their father in his life-time, applied to the judgments against the husband, it was held by the supreme court at general term in the first district that "in regard to real property belonging to the wife at the time of marriage, if prior to the act of 1848, the husband took a vested interest, was entitled at once to the rents and profits during their joint lives, and in case of the birth of a living child, to a contingent right on the death of his wife, to the sole enjoyment during his life; but that as to her future acquired property, his interest is subject to any change the Legislature may prescribe, and that the wives held to their sole and separate use." In Billings *v.* Baker, reported in 28 Barbour, 343, in an action for a partition of real estate, where the question was raised as to what inchoate right or interest the husband had, it was held "that the acts of 1848 and 1849 absolutely abrogate the prospective right of the husband as tenant by the curtesy." But in Vallance *v.* Bausch (28 Barbour, 633), where the right of the husband to the personalty of his deceased wife was raised, the court at general term in the first district held "that the common law or statutory right of the husband to all his wife's personal property, is a right commencing with marriage, continuing during their joint lives, and surviving on her death," and that it "was not the intention of the Legislature to abolish or change the husband's prospective right of succession to her personalty." I could add other cases, decided by this court, involving this question, where the opinions are conflicting. But again, sir, I will pass to the question of the statute of limitations, which we had supposed was pretty well settled, and upon which there was a rule by which we could be governed in practice, but it has so happened that the question as applicable to a stock note given to an insurance company, has been differently decided, in different districts. In one case, the name of which I do not now remember, it was held in the fourth district, in a very elaborate and able opinion, that the statute of limitations did apply to such a note, but in some of the other districts it was held not to apply, and that such a note was a continuing contract—thus producing conflict, confusion and uncertainty upon that question. This conflict has arisen, not from want of ability, or honest intention on the part of the courts or judges, but from the organic construction of the supreme court, and is the legitimate and necessary consequence of the division of the court into eight independent and isolated tribunals. Conflict in opinions and decisions is an inevitable result, it is an organic disease, and nothing short of organic reconstruction can remedy or cure the evil. Again, sir, every gentleman who has had occasion to go into our courts at special term, and there observe the practice, must know that there is hardly a section of the Code of Procedure (which was designed to be so plain that any man of ordinary capacity or understanding might understand it) but has received different constructions from different judges, for there are hardly any two judges in the State who have agreed upon the meaning of many sections of the Code. It may be a very pretty state of things for the attorney, at least for him who wins, though not so pleasant for the litigant who has to pay the bill, nor for the unsuccessful counsel, who, having prepared his case and his papers according to the promulgated opinions of a judge, goes into court in the faith that that opinion is good law, and that it will be adhered to as such, at least by the judge who promulgated it, yet finds that the law he reads, admitted to be good law by the presiding judge in some other district, while informed that, he, the judge, being in a district where some other judge has given a different opinion, feels constrained, by a sort of judicial courtesy to overrule his own opinion of the law in deference to his erring brother. I myself, was the unfortunate victim of an instance of that kind of practice a few years ago. and now I wish my learned friend from Rensselaer [Mr. M. I. Townsend] was in his seat, as he is one of the gentlemen in the Convention who think the evils of conflict and uncertainty in the decisions are exaggerated and overrated, and as he or his firm was *particeps criminis* in perpetrating

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the evil upon me, I would like to face him now and here while I detail the incident, which is but a sample of hundreds illustrative of the beauties of conflict of decision and of the abandonment of the common law maxim, *stare decisis*. I based my motion upon a section of the Code and in conformity to a decision then recently made, giving it judicial construction by his honor, Judge Parker, and if the gentleman is present he will excuse me in saying now that I thought his decision was an enlightened, liberal and able opinion, giving the true construction to that section of the Code prescribing where special motions should or must be made. As I said, I based my motion upon that section and upon that decision which had been made by his honor, Judge Parker, in the third district. My adversaries, Townsend & Kellogg, met me at St. Johnsville, on the way to Herkimer, where my motion was to be made. Mr. Kellogg told me he thought I had better not go up there, as they intended to beat me in my motion. I did not see how I could be defeated in my motion with such a clear and conclusive opinion in my favor. The cigars were wagered and we went on to the court. I found Judge Parker on the bench, and felt still more confident of success with my motion. I got up and stated my case, which was identical with the one decided by his honor in the third district—upon which he stated to the counsel on the other side that he had recently decided that question and that Mr Baker was right. "But," said Mr. Kellogg, "your honor, if it were in the third district we should yield the point without debate or question; but we are in the fifth district, and Judge Allen has decided just the other way." His honor, shrugging his shoulders, and perhaps coloring a little at the inconsistencies of the law and the dilemmas into which judges were thus put by the conflict of decisions, read or heard read the decision of Judge Allen, and very kindly told me if he were at home, he should hold my law was good; but he, being in a district where the judges differed with him, felt under obligations to defer to the opinion of the judge in the fifth district as a matter of judicial courtesy. I was beaten with my case with the best law on my side.

Mr. M. I. TOWNSEND—I did not hear what the gentleman said. I will ask him a question—if he refers to me in any thing he said?

Mr. BAKER—Not at all. It was suggested by a friend near me that it was only a matter of the cigars.

Mr. M. I. TOWNSEND—I certainly never had any case with my learned friend, and never was in the Herkimer court-house in my life.

Mr. BAKER—I do not want to go over the statement of the case again, but will say to the gentleman that it was his partner.

Mr. M. I. TOWNSEND—It was Mr. Kellogg to whom the gentleman alluded, I presume.

Mr. BAKER—It was Kellogg & Townsend.

Mr. M. I. TOWNSEND—There never has been any such firm.

Mr. BAKER—Perhaps the gentleman will remember the case of a very worthy client of his from Montpelier, Vermont, who brought an action, laying the venue in Rensselaer county against the defendant in Montgomery county, the case of Bancroft *v.* Haight?

Mr. M. I. TOWNSEND—There was no such case in my office.

Mr. BAKER—There was such a case prosecuted by Townsend & Kellogg, but I believe it was the gentleman's partner who had it in charge.

Mr. M. I. TOWNSEND—I was not there; I do not know any thing about it.

Mr. BAKER—I think, if the gentleman was there, and had seen the effect of the conflict of decisions, and the mortifying position in which the judge of the supreme court was put in finding himself contradicted in what he decided to be good law, he would have a better comprehension of the evils attending such conflicts of decision. I believe that this evil of fluctuation and uncertainty and conflict in the law is the greatest evil our judiciary system labors under to-day. I believe the people suffer more from it than any other defect, or all other defects, in the present Constitution put together. I believe that grievance had more to do with the calling of this Convention, to provide a remedy for it, than any other; and I confess my surprise that I see member after member getting up in this Convention and conceding all we claim as to its being an evil, and an unmitigated evil, and not proposing any remedy for it. I can tell gentlemen here that the legal profession all over the State understand this question precisely as I do. And why? Because they have suffered as well as I have and as every delegate to this Convention, in practice as a lawyer, must have suffered. If he has had any practice, he must have had cases of that kind. Is it or not an evil, where you go to a justice of a court and there propose a certain kind of evidence which has been given a legal status in your district, to have your adversary cite something directly contrary in his district of equal authority? These are facts; and if there is any honorable delegate who would deny these facts, let him examine Barbour's Reports and look at the conflicting decisions, since 1846, especially those that have grown out of the construction of the Code of Procedure. In making these comments, I do not mean to impute bad motives to the judges who have promulgated these decisions. Nor is it the duty of this Convention to decide the matter as to which is right or which is wrong. Each one is entitled to his own private opinion. But it is the duty of this Convention to provide an organic structure to the court by which this conflict, by no possibility, can accrue without the court stultifying itself. That is the point I make. How is it to be done? One gentleman says you may get unity in the law and uniformity in the decisions, by carrying your cases to the court of appeals. I say to those delegates who take that view, that each one of these cases that I have mentioned, containing questions as to the opinion of witnesses, originated in justices' courts, and could go no further. In the sixth and seventh districts the law is declared to be one way, and in the fourth and eighth districts just the opposite way. Then, what is the law? You cannot take your case, originating in a justice's court, to the court of ap-

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peals." You may do so if it commenced in the county court, or in the supreme court. You cannot take a case that originated in a justice's court according to our present system, and according to any system that is proposed here, and carry it to the court of appeals, and there get a decision which is a finality upon this question. Hence, you will find there is a class of cases like this question cited, upon the opinion of witnesses who are not experts, where the law is conflicting and has been differently decided in almost every district in the State, and you have no remedy until somebody pleases to take a case up to the court of appeals and there get it settled. In the meantime, while your appeal is pending in the court of appeals, the people are to rest under this uncertainty and in a position where the decision of a justice of the peace, is just as binding, as an authority, as the decision of the supreme court. This I regard as a great evil and, Mr. Chairman, in my judgment it is one of the evils, and the principal one, that has resulted in the clogging up of the court of appeals. It is this constant conflict of decisions that has grown up in the multiplication of supreme courts in the State, that has clogged up and accumulated such an immense business in the court of appeals, cases involving these conflicts which have gone to that court for final decision. There is no doubt about it. But if you create a supreme court that promulgates but one law, you will diminish, in my judgment, from thirty to fifty per cent in the first year after the court goes into operation the number of appeals from that court to the court of appeals. It is the uncertainty, the fluctuation of law, and conflict in the lower courts, that compels the people, in order to know what the law is, to go to the court of last resort. It is inevitable from the independent and isolated eight supreme courts. There is no remedy for it, but to make the court a unit.

Mr. M. H. LAWRENCE—I would like to ask the gentleman a question. It is said that lawyers seldom go to law with each other. Is it because of their lack of confidence in the decisions of the judges? They have no confidence in lawyers' law.

Mr BAKER—I will adopt the answer which my friend from Clinton [Mr. Beckwith] whispers, because they know how to keep out of the law. Every careful man, and every man who is careful of his property, or his reputation, will be careful how he goes into a mill where he cannot tell what course he will take to find his way through. He wants to know where he is coming out, and where and how he is to end. And that is the complaint I make against the present judiciary system. I want to know, when I go to court, what its precedents have been and that it will adhere to such precedents. I want to have confidence in the judge, that when I cite a case which has been decided by that same court that its opinions will be received and respected as the law. As it is, as I have shown, the opinion of the court is not received or respected even by itself. I have not taken pains to look up the cases where the court has disagreed with the decisions in its own district. I can find a great many such cases, however, in the reports. In some cases it is very proper for the court to correct itself where it has made a mistake, or has not given the question the proper consideration. But this eternal fluctuation and conflict of law renders it unsafe for business men, and unsafe for counsel to advise their clients. If a counsel be honest he can only say: "I do not know what the law is, nor how your case will end. You must take your chances." That is the opinion every honest lawyer must give his clients. I want the law to be such that when I am called upon for my opinion, I can refer to some decision, or precedent established by the court, and say to my client, this is the law declared by the court itself, and will be adhered to by the court in the future.

Mr. M. H. LAWRENCE—Do I understand that the judges make the law?

Mr. BAKER—No, sir.

Mr. M. H. LAWRENCE—I thought legislative bodies only made laws.

Mr. BAKER—I have been talking about half an hour to show that lawyers and judges of the supreme court not only do not make the law, but do not know what the law is.

Mr. M. H. LAWRENCE—I would like to ask if it is possible to adopt any rule by which men will not construe laws differently?

Mr. BAKER—I will come to that in the course of my argument. I believe it was agreed that I should be let alone [laughter], but I will answer the gentleman's question now. If you create one supreme court the result, so far as the enunciation of decisions is concerned, would have this advantage over the present system: under the present system a full bench of the supreme court may be in session in two or more districts on the same day, as I believe they have been for many years past, since the present organization. The same precise question may be brought before those several courts on the same day, argued the same, and decided the same term, and in direct conflict with other, and yet any one can see that if the judges had been together, and had compared opinions, and taken a vote of the court, the similar cases must have been decided one way, and there could not have been two decisions from the necessity of the case. I do not undertake to say that the court at circuit would be any more apt to be right in its law. It is not within the province or power of this Convention to decide that question. There shall be but one law, and the people all over the State, the inferior magistrate and the business man would know what the law was for the time being. If the court of appeals promulgates a decision that is deemed bad law, or impolitic, every one knows that it is the business of the Legislature to provide such remedies as will cure the evil. I would inquire of any gentleman who believes in the multiplied and isolated courts, in these eight equal, independent supreme courts, how the Legislature can remedy such an evil as conflict of decisions? Upon the question of the admission or the exclusion of the opinions of a non-professional witness, two courts at general term have decided in one way, and two courts in general term have decided exactly the other way; the decisions were exactly in conflict. How can the Legislature

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remedy this evil? If the court of appeals, being a final court, had pronounced a judgment which was a finality, then the Legislature could correct the evil—it being done by the supreme court there is no remedy. But nobody ever having taken a case to the court of appeals involving these conflicting decisions, and the Legislature not being the proper tribunal to decide, the people are left without remedy in all cases where they cannot get the decision of the court of appeals. But I inquire how can you get there with the cases I have mentioned? You cannot get to the court of appeals with a case arising in a justice's court; you are at the end of the law when you get to the decision of the supreme court. Now there is another question. I had supposed that the question of the tenure of office, and of every accompanying question as to the manner and mode of appointing or electing judges, was disposed of. I have not participated in the debate on that question. Various gentlemen have given their opinions as to which would be the best mode of appointing our judges, or which mode would best conduce to the independence and stability of the court. Gentlemen may give opinions here—mere abstract opinions. If you give a judge a life tenure he is comparatively independent, and such a tenure will add to the dignity and character of the court, and perhaps, to its honesty. But this, after all, is not the question, it is a question of appointment; and I would inquire, does it not depend more upon the character of a man appointed than upon the mode of his appointment? We are not without examples, both in England and in this country, not without historical cases bearing upon this subject. I shall not undertake to review any remarks upon the manner of appointing judges in the English courts. The gentlemen who have preceded me have discussed that question more ably than I can do. But we have been appealed to, to compare that august tribunal, the supreme court of the United States, at Washington, with our own State courts, and to see if we could not derive an argument in favor of the appointment of judges by the Executive power for a life tenure from the character of the supreme court at Washington. It seems to me, so far as I have been able to study the history of the supreme court, at Washington, and the court of appeals of the State of New York, that the argument is entirely in favor of the mode in which we have appointed our judges. The late chief justice of the United States, it is conceded by politicians and by the legal profession, was a man of eminent ability. He was a man of powerful intellect, well cultivated, and nobody distrusted his ability as a judge; and yet we know that same judge, with the concurrence of a sectional portion of his court, a political section of his court, promulgated a political decision which had, perhaps, more than any other one thing to do in precipitating rebellion and insurrection upon this country, and involving the people of the United States in an amount of public debt and consequent taxation that is resting so heavily upon the resources, the labor and the commercial enterprise of this country, which will, as some say, rest upon it for a hundred years to come. That decision had more to do with the precipitation of this country into the rebellio and civil war than perhaps any other one thin and that political decision is a sample of judici independence and integrity. Now, although happen to differ with the recent chief justice c the court of appeals of the State of New York i politics (I refer to Judge Denio), and althoug he was elected by the people, elected b the democratic voters and some republican yet I am proud to say, upon and soon afte the rendition of the Dred Scott decision, Judg Denio wrote an opinion in the Lemon slav case, in which he declared the law of thi State to be different from what the advocates of the Dred Scott decision held it to be. For it wa held in the Dred Scott case, by Judge Taney, a a maxim, as a principle of law, to control in the Federal courts, and by being the supreme law of the land, to control the State judiciaries, that the Constitution of the United States recognized and protects property in slaves wherever that Constitution is the supreme law, and that any owner of property had a right to take his property into or through any State in the Union, and no one had a right to interfere with him; and it was argued and insisted upon by the claimant in the Lemon slave case that, under that clause in the Constitution of the United States which provides "that the citizens of each State shall be entitled to all privileges and immunities of citizens in the several States," that, as a necessary consequence, and as a legitimate result of the decision in the Dred Scott case under the protective clause of the Constitution of the United States that Mr. Lemon had a right to take his slaves into or through the State of New York without molestation or interference, and without the emancipating effect of the statutes of this State. Still, Judge Denio pronounced the law of this State in accordance with and in affirmance of our statute on that subject, though his decision was certainly in opposition to the prevalent doctrine of his party, as I understood it then, and as I understand it now. Again, when the metropolitan police bill was brought before that court, the same judge sustained the constitutionality of that law, also in opposition to the principles and desires of his political party. But he could not be induced by political arguments to pervert the law or prostitute the court for political purposes. I am proud to compare, since we have been challenged to compare, the dignity, character and independence of the supreme court of the United States at Washington with the courts of the State of New York, though the judges of that court are appointed for life and of this State elected but for a limited term. I am proud to say that as a citizen of the State and as a republican in politics, I cannot find any fault with the decisions which Judge Denio or any other democratic judge has made in the State on the ground of supposed political bias. That a high and honorable sense of the dignity and true character of what the judicial department should be has pervaded our judiciary to a remarkable extent no one can truthfully deny, nor do I understand it to be the complaint of any class, party or person in the State to-day, or among any class or portion of the people of this State, that our

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court has ever been prostituted by the judges for political purposes or by political excitement. But that is more than we can say of the supreme court of the United States. And whilst I am now upon this subject of the independence of the judiciary as growing out of the manner and mode of their appointment, I desire to read the opinion of a distinguished statesman and politician of the State of Georgia on the subject of the independence of the United States supreme court. Some gentlemen take the ground that the supreme court of the United States never was considered a political court and never was said to have been prostituted by its judges for political purposes, but in answer let me for one moment read the opinion of that distinguished gentleman of Georgia, just before the secession of that State, when he appeared before the secession convention to tell them how it would involve not only the entire South but the United States in a desolating civil war which would not only involve the South in ruin, bloodshed and fraternal strife, but would cast upon this country a debt larger than any government of Europe labors under to-day. In that earnest and eloquent address he used the following remarkable language, which I will quote for the purpose of showing the opinion, the deliberately expressed opinion, of the Hon. Alexander H. Stephens as to the political character of the supreme court of the United States. After enumerating the blessings of the United States government as derived from and under the Constitution, and from practical operations and administration under the Constitution, from the organization of the government down to the time of secession and rebellion, he says:

"But again, gentlemen, what have we to gain by this proposed change of our relations to the general government? We have always had the control of it, and can yet if we remain in it and are as united as we have been. We have had a majority of the Presidents chosen from the South as well as the control and management of the most of those chosen from the North. We have had sixty years of southern Presidents to their twenty-four; thus controlling the executive department. So of the judges of the supreme court. We have had eighteen from the South, and but eleven from the North, although nearly four-fifths of the judicial business has arisen in the free States. Yet a majority of the court has always been from the South. *This we have required so as to guard against an interpretation of the Constitution unfavorable to us.*"

Now, sir, I read these remarks, made by one of the ablest men in the South, if not in the United States, a man who had studied and watched over the political interests of the people of the South, from his boyhood until the day of secession and rebellion, a man who had wielded great influence in Southern politics for many years, a man who was familiar with the action of the Federal Government for many years, and who had studied its operations and its workings with reference to the benefits conferred by it upon the South, and had compared the advantages of the South under the Constitution with the disadvantages of remaining in the union, and whose fame was then upon the eve of passing an ordinance of secession. We have his opinion, and we have a right to claim the benefit of that opinion to-day, in argument against both the mode of appointment and tenure of office of the judges, because, so far as his political biases were concerned, his opinions would naturally be against the people of the North. It would be in the spirit and strain of complaint, reviewing the evils they, the people of the South, had suffered. We cannot presume that Mr. Stephens, upon that occasion, would have stated facts more strongly than the truth would bear against the South, and still he claims that they had had a majority of the judges in the supreme court selected from the South, where only one-fifth of the business arose, and "this they required so as to guard against any interpretation of the Constitution unfavorable to us." Now, I would inquire when and how, under our system, the court of appeals has ever been guilty of giving or pronouncing political decisions favorable to any particular political party or faction? I believe our democratic judges and our republican judges stand above the imputation or suspicion in any part or quarter of the State of New York, of any such sectional or political bias; and I will say the same of all the judges who have ever presided over the courts so far, at least, as the promulgation of political decisions is concerned. I am very glad that gentlemen have called our attention to and challenged a comparison of the courts at Washington with the courts of the State of New York. Now one word in respect to the allegations made by various gentlemen upon the floor of this house, that the business of the State of New York is so great that one supreme court cannot perform it. I have this to say, that if we shall construct but one supreme court, to consist of a competent and sufficient number of judges, and organize the court so that it cannot without stultifying itself, promulgate contradictory and conflicting law, by that simple organic arrangement, you will lessen the number of appeals to the court of appeals from thirty to fifty per cent the very first year such a court goes into operation. If you do that there will be no difficulty in organizing a court of appeals that can take the present calendar and decide all the cases now accumulated, together with the increasing business of the State. Mr. Chairman, I fear we shall find this to result from the article we have already passed upon in relation to the court of appeals. We shall find in this Capitol two independent tribunals sitting to decide cases which will and must necessarily conflict. I hold it to be just as inevitable as that daylight will follow the rising of the sun, that if you have two courts of last resort in operation with equal jurisdiction to decide upon the same class of questions, those courts will produce and promulgate conflicting law, and we will have to labor from ten to fifteen years, and perhaps twenty years, to get rid of the conflict and confusion of law. I trust the members of this Convention will live long enough, if that section is passed, to regret the day we adopted it. If we want uniformity, if we want stability, if we want a continuous consistency in the decisions promulgated by our courts, we must so constitute the courts as to produce that result,

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because I hold that an opposite result will follow from a different organization. It is useless for us to lay the blame upon one court or upon the other. Who will undertake to blame either of the supreme courts, that they promulgate conflicting decisions. Still the conflict is rendering every thing in business, in law, and in all the practical affairs and interests of society so uncertain that confidence in and respect for the judicial department of the government are absolutely destroyed. I am for getting rid of this uncertainty, this conflict of decision, and these perpetual fluctuations, and therefore I think we had better create one supreme court which can discharge all the duties which will be brought before it. It is objected that if you create one great court in the State called the supreme court, it cannot do all the business, and members of the profession in different parts of the State cannot all be accommodated in their several localities; that the supreme court will be located at Albany, or some other place, and that a few lawyers would monopolize all the business. I would combine the benefits of the system of 1846, in that respect, with the unity and oneness of the court. I would require the court, by law or by constitutional provision, to hold its sessions at such convenient places within the State as to accommodate the members of the profession and business communities in every county. I believe it could be done. I believe if you tinker up a court of appeals, consisting of two independent tribunals, promulgating a conflicting and different law, it will trouble us for years and years to come, and questions will have to be settled by the Legislature, which ought to be, and would be, under a proper system, decided by the courts, and we know what kind of a tribunal that is to settle law. If you create or continue the eight supreme courts, then the great difficulty which has been conceded by almost every member of this Convention who has preceded me, continues without remedy. We do not offer the people any relief, and how can we go home to our constituents and ask them to vote for a Constitution that we ourselves admit cannot effect the reform of the evils of which the people so justly complain?

Mr. SPENCER—Perhaps nothing further can be said to afford a better understanding of the several propositions now before the Committee. But I, nevertheless, ask the indulgence of the committee for a few moments. It would be extremely desirable, if it were practicable, for this Convention to recommend to the people a Constitution by which every party to a lawsuit might be successful. [Laughter.] Several of the gentlemen who have found fault with the present organization of the supreme court, have put it upon the ground, substantially, that under it they have been unfortunate in some of the litigations in which they were concerned. But, so long as there are to be two parties to a lawsuit, some one must always be unsuccessful, and the unsuccessful one will always find fault with the system, which, he claims, has been the cause of his failure. Mr. Chairman, I do not think that the fault is in the organization of the court, or that the remedy for this state of things is in this Convention. I am inclined to oppose the plan proposed by the gentleman from Chenango [Mr. Prindle], in the first place, because it tends to that centraliza which was the great evil complained of un the system existing prior to 1846. It will not, deed, under the proposed plan, exist to the sa degree, but it will, nevertheless, exist. Gen men say that the Legislature will obviate t difficulty; but the plan proposed puts no restra upon the Legislature in that respect.

Mr. PRINDLE—Will the gentleman allow m Could we not adopt a provision that the judg should hold terms in the district as they now held?

Mr. SPENCER—All that may be done. I speaking simply of a plan as it is now proposed

Mr. PRINDLE—It was the intention to p them together in one section.

Mr. SPENCER—Many of the gentlemen wl have advocated this plan have advocated the lea ing of some latitude to the Legislature for t organization of the court. The Convention c 1846 undertook to obviate this evil of centraliz tion, and they proposed to have the general ter of the supreme court held in every county of th State. They proposed that the court of appeal should travel from one end of the State to th other, from east to west, from north to south and hold their courts in every part of the State The system was tried a few years and the judge found it so inconvenient that it was changed, and so far as the court of appeals was concerned, all the terms of the court were held at Albany, where the terms of the principal courts had always before been held. And in regard to the terms of the supreme court they were held in the centers of the several districts instead of being distributed around among the counties as was the intention of the framers of the Constitution of 1846. The gentleman from Chenango [Mr. Prindle] puts his proposition as a test to determine whether the Convention will sustain the principle of separating the duties appertaining to the trial of cases at circuit, and those of the law terms of the court. But I apprehend that he cannot have been acquainted with the complaints that were made of the system as it existed under the judiciary system prior to 1846. There was no complaint more loud, no complaint more universal than that the judges of the court who decided the cases were not familiar with the working and the practice of the trial, and therefore were not so competent to form an opinion and decide upon the questions that came before them, as if they had been practically acquainted with the proceedings of the circuits. It was a complaint that I have heard urged to courts and addressed to juries, and from the profession at large. And it was reiterated in the debates of the Convention of 1846, again and again; and the complaint prevailed to such an extent that the system was overturned. If this proposition is put forward as a test as to which of these systems shall be adopted, I trust that the members of this Convention will not hesitate long as to the one to which they will adhere. Now, a word as to the proposition which has been submitted by the Judiciary Committee. Before coming to that, however, I will add another suggestion in regard to the plan proposed by the gentleman from Chenango [Mr. Prindle]. It is an experiment; no such plan has ever before

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ion proposed in this or any other State. It is impossible, from any experience we have had, or from any history with which we are acquainted, to determine what will be its practical working. It can only be a matter of mere conjecture. It is entirely uncertain whether the force which is proposed to detail for the holding of a general term to decide questions of law will be adequate for that purpose. It seems to me entirely clear that the proposition to delegate to two judges of the several districts the performance of circuit duties will be to devolve those duties upon an entirely inadequate force. The plan provides no remedy by which this force can be increased in either of the departments. It provides that there shall be twelve judges of the supreme court, who shall have appellate jurisdiction only. The phraseology is open to criticism, although this may be corrected.

Mr. FOLGER—Of what plan is the gentleman speaking.

Mr. SPENCER—Of the plan of the gentleman from Chenango [Mr. Prindle]. The language of this proposition implies that all these twelve judges are in the aggregate to have appellate jurisdiction. But it still provides that three or more of them may hold court, but the Legislature may provide that they shall all be employed for that purpose. And you may, under the authority of the Legislature, have a second court of appeals of equal authority with the court of appeals which we have already established. But it is enough to say that this system is an untried experiment which would be dangerous and unsafe to adopt in the place of the one which has been tried and which has been found adequate to every emergency in which it has been placed. I now have a word or two to say in regard to the plan of the Judiciary Committee, and in regard to that the committee do not seem to be very well agreed among themselves. Of the whole number who joined in the majority report, seven, I believe, have addressed the committee upon the subject of several of the propositions now before it. Of those seven, one dissented entirely and has presented a plan of his own, which, being rejected, he now falls back upon the plan of the gentleman from Chenango [Mr. Prindle]. Another member of the committee gives his adherence to the present organization of the supreme court. Another gentleman of the committee has given utterance to his eminently sound judgment and his superior common sense in favor of the present system, and, of the whole number, only four have given their unqualified adherence to the plan which is proposed by the majority of the committee. What is there in that plan which should commend it to this committee, or which should commend it to the people of the State, over that which is at present in existence? It only differs from the present plan of organization of the supreme court in providing that the judges shall be elected by two districts instead of by one, and in every other particular it leaves the court precisely where it is. The judges who are to be elected are to reside in the same districts, as now, and it only differs from the present plan in allowing the electors of one district to assist in the choice of judges in another. But gentlemen say the Legislature will organize these all right. They will make the general terms so that the judges will be designated for holding that court, so as to avoid that conflict of decision of which my friend from Montgomery [Mr. Baker] has so much complained. The gentleman who proposed this will see that it can be as easily, as properly done under the present organization as under the one which he has proposed.

Mr. BAKER—Is the gentleman of opinion that I made a correct statement as to the conflict of decision?

Mr. SPENCER—Yes, sir. I have experienced something of the same trouble as the gentleman from Montgomery [Mr. Baker]. I have thought sometimes that I had a decision that sustained my case, and the court thought differently. I had to submit to go to a higher tribunal.

Mr. BAKER—I desire to ask the gentleman what he would do if he went to the last court and there found a conflict in decision?

Mr. SPENCER—Well, I do not know what I should do. I rather think I should submit if the case there were decided against me.

Mr. BAKER—I intended to ask what the gentleman would do in reorganizing a court to prevent these conflicts?

Mr. SPENCER—I would do precisely what we have done. We have organized a court of final resort, and it is there that all conflicting questions of law must be settled, so far as they can be settled by a human tribunal. I do not know that there is another State in the Union which has an intermediate court where appeals are had, where reviews are had of questions occurring at the trial, but as a general thing, in nearly if not quite every State in the Union, the question passes at once from the inferior court to the court of final resort. In Connecticut, Massachusetts, Pennsylvania, Ohio, and in nearly if not quite every State in the Union there is no such thing as a supreme court and a court higher than that.

Mr. BAKER—In those States is there more than one court of last resort?

Mr. SPENCER—There is not, it is impossible in the nature of things.

Mr. BAKER—Then the gentlemen would provide one court of last resort?

Mr. SPENCER—What I said when I addressed this committee before was that the supreme court is an inferior court, and that, holding courts in different localities, these become local courts, and it is impossible to make any thing else of them. The supreme court of the fourth judicial district is as much a local court as the superior court of the city of New York, or the superior court of the city of Buffalo, and nothing in the world can divest it of that character, and therefore it is entirely impossible to have that unity and that uniformity of decision in the supreme court, unless you can have a single court, and composed of the same men, which shall decide all questions of law in it.

Mr. DALY—I refer the gentleman to the notes in the annotated copy of the Constitution, under article six, for a correction of his statement that there was no intermediate tribunal in the other States of the Union, analogous to our own court. He will find a classification of the different States

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where there are courts of appeals, or courts of this character, some of them by the same name, and some of them by the name of superior court, but all of them intermediate courts and subject to appellate jurisdiction, of the character of the court of appeals.

Mr. SPENCER—There are several.

Mr. DALY—There are a great many.

Mr. SPENCER—I stand corrected in that particular. But that does not affect the argument that these courts which are referred to are local courts. They possess no other character.

Mr. DALY—I refer the gentleman to courts of general jurisdiction, subject to an appellate tribunal, generally called courts of appeal, but sometimes by other names.

Mr. SPENCER—Will the gentleman mention in what States there are such courts?

Mr. DALY—It is a very long list.

Mr. SPENCER—A single one.

Mr. DALY—Delaware, Maryland.

Mr. SPENCER—It is not so, I believe, in the State of Pennsylvania, or Massachusetts, or Connecticut. Those are the States that I mentioned as instances; but if there are as many as the gentleman states, I have overlooked the fact.

The question was put on the adoption of the amendment of Mr. Prindle, and, on a division, it was declared lost by a vote of 30 to 51.

Mr. DALY—I move that the committee do now rise and report progress.

The question was put on the motion of Mr. Daly, and, on a division, it was declared carried by a vote of 50 to 39.

Whereupon the committee arose and the PRESIDENT resumed the chair in Convention.

Mr. C. C. DWIGHT, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Judiciary, had made some progress therein, but not having gone through therewith, had instructed their Chairman to report that fact to the Convention and ask leave to sit again.

Mr. WAKEMAN—I move that the Committee of the Whole be discharged from further consideration of the article, and that the same be referred to the Convention.

The question was put on the motion of Mr. Wakeman, and, on a division, it was declared lost by a vote of 20 ayes—noes not counted.

The question recurred upon granting leave, and it was declared carried.

Mr. STRATTON—I move that the Convention do now adjourn.

The question was put on the motion to adjourn, and it was declared carried.

So the Convention adjourned.

FRIDAY, December 13, 1867.

The Convention met at ten o'clock A. M., pursuant to adjournment.

Prayer was offered by Rev. Dr. WYCKOFF.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. GOULD—I ask leave of absence for Mr. L. W. Russell, of St. Lawrence until Tuesday morning next.

There being no objection, leave was granted.

Mr. GOULD—I ask leave of absence, also, for Mr. Mattice until Tuesday morning next.

There being no objection, leave was granted.

Mr. MERRITT, from the select committee appointed to confer with the authorities of the city of Albany relative to a hall for the use of the Convention, made the following report:

The committee appointed to confer with the authorities of the city of Albany, in relation to a suitable hall and accommodations for the use of this Convention after the meeting of the Legislature, would respectfully report: That they met a special committee of the common council of the city of Albany who offered them the choice of the following rooms: First, the common council chamber. This chamber is in the City Hall nearly opposite the Capitol. It is a room seventy-four feet long by thirty-two feet wide, with high arched ceilings, well lighted, and heated with furnaces, having convenient registers. Connected with this chamber are several smaller rooms which would answer for the post-office, library, cloak room and other conveniences. The mayor's room will also be placed at the disposal of the Convention. Second, the lecture room of the Agricultural Hall. This room is in the basement of said hall, and is sixty-four by thirty-four feet, with low ceiling and insufficient light. Third, Association Hall, which is near the foot of State street, in the third story, and is sixty-two by forty-two feet in dimensions. It has a gallery which will seat about two hundred persons, but is not well lighted. From the fact that Tweddle Hall could not be obtained for evening sessions of this Convention, your committee deemed it unnecessary to give it their consideration. While neither of the above-mentioned halls would afford as ample accommodations as we now enjoy, your committee are unanimous in the opinion that the accommodations which could be secured in the City Hall would be superior to any of the others offered; and sufficient for the business of this Convention. After a full examination of the subject referred, your committee recommend the adoption of the following resolution:

Resolved, That this Convention hereby accepts the proposition of the city of Albany to fit up the common council chamber and other rooms in the City Hall for the use of this Convention, with chairs and desks, cloak closets, post-office and such other conveniences as may be required, without expense to the State, either for such fitting up, or for use, or for lighting and heating the same; and the Secretary of this Convention is hereby directed to confer with the committee of the common council having these matters in charge, in order to inform them what will be necessary to be done.

EDWIN A. MERRITT,
JAMES A. BELL,
WM. H. MORRIS,
Committee.

ALBANY, December 13, 1867.

Mr. MORRIS—Wishing to be consistent on the record, I desire to explain that I signed this report, accepting the test vote of yesterday as sufficiently indicating the intention of this Convention to remain in Albany. At the same time, I

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wish it to be understood that I reserve to myself the right to vote for an adjournment to New York, should that question again come up.

Mr. DEVELIN—I move to lay that report on the table.

Mr. MERRITT—I hope not, Mr. President.

The question was put on the motion of Mr. Develin to lay on the table, and, on a division, it was declared lost by a vote of 39 to 50.

Mr. MERRITT—While the committee are not desirous of the adoption of this report now, it is important that some conclusion should be arrived at very soon, as it would take some time to prepare a room for our accommodation. As the vote taken yesterday showed a larger number of delegates present, than at any other time for the past few weeks, it seems to me proper that this important question should now be decided.

Mr. E. BROOKS—I move to postpone the consideration of this resolution until Tuesday, or perhaps Wednesday, of next week, until the resolutions now lying upon the table, looking to the appointment of committees to confer with the authorities of other cities upon this subject, shall be acted upon by the Convention one way or the other. Sir, the more I reflect upon the subject of our meeting here when the Legislature is in session, the more convinced I am of the inappropriateness of any such action. I do not believe that the public interest will be subserved either on the part of this Convention or on the part of the Legislature, if these two bodies hold their sessions at the same place and at the same time. The hall which the committee have selected certainly bears no appropriateness, in comparison with this hall, for the accommodation of this body, and I do not see any reason why we should be thrust from this hall into an inferior and more inconvenient place, or why we should be compelled to go to a place that is not one-half the size of the present Assembly chamber. I think it but fair on the part of the majority of this body to allow the minority at least to examine and report whether there is not some other place more accessible and more appropriate than can be found in the city of Albany for our deliberations. I think the majority can well afford to allow a committee of five, more or less, to examine and report whether there is not some place more appropriate and convenient than the one before us, which has been recommended by this select committee. I think, indeed, Mr. President, that the more we reflect upon this subject the more convinced we must all be that if we are to conclude our work in a becoming manner it is not advisable that the two bodies—this Convention and the Legislature—shall be in session here during this winter. I think I could give many other reasons for this view of the case, but as they would, perhaps, imply some reflections upon the one body or the other, I shall not now indulge in them, but leave them to suggest themselves to the members of the Convention. I appeal now to the sense of justice and magnanimity on the part of the majority of this body that they will allow this report to remain upon the table, or that the consideration of the report be postponed until some other committee can examine and report whether some more appropriate place can be found, and I therefore move you to postpone the consideration of the resolution until Wednesday next.

Mr. DEVELIN—If I understood the Secretary as he read that report, the room which the committee recommended us to accept is seventy-four feet long by thirty-four feet wide. Now, if gentlemen will for a moment reflect, they will see that it is utterly impossible for this Convention to sit in a room that is only seventy-four feet long by thirty-four feet wide. Its length is two feet less than the width of this room. Now, I submit whether this Convention can meet in a room of these dimensions? I say it is utterly impossible. The room which the committee recommended was designed for the meeting of the board of aldermen of the city of Albany, a small room utterly incapable of containing comfortably the number of gentlemen that compose this Convention. I do not understand the vote of yesterday as deciding that the Convention must continue to meet at Albany. One gentleman who voted against the resolution to go to New York, said expressly that he was in favor of a committee to inquire and examine in regard to the accommodations that could be obtained in other places, and so I have heard other gentlemen say. I hope, therefore, that this matter will be postponed at least long enough to let members go and look at this room and decide for themselves in regard to its appropriateness.

Mr. CURTIS—I hope the motion of my colleague [Mr. E. Brooks] will be adopted by the Convention. I certainly understood, in voting yesterday, that we were not concluded by that vote to remain in Albany. The scope of our action was that inquiry should be made as to where it was best that the Convention should continue its sessions. By the terms of the report this morning it is perfectly clear that none of the halls which have been inspected are exactly convenient for the meetings of this Convention. It seems to me, therefore, necessary that we should await the reports of the other committees which have been suggested, and then let the Convention itself make comparisons and decide. I hope that the suggestion of my colleague [Mr. E. Brooks] will prevail.

The PRESIDENT—The question is on the motion of the gentleman from Kings [Mr. E. Brooks] to postpone the consideration of this resolution until Tuesday next. Gentlemen will please confine themselves strictly to the question of postponement.

Mr. BELL—Without going into any discussion of the propriety of meeting here or elsewhere after the convening of the Legislature, I would say that the committee of this body have been informed by the committee of the common council that it is important that an early decision be arrived at in order that they may put the room in proper condition for our sessions if the Convention decide to continue its sessions in Albany. In regard to the capacity of this room, I would say that, while the report contains as nearly as may be a correct statement of the length and breadth of the room, and while it may seem too small to accommodate this body, yet the committee were informed that it has frequently held

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three hundred persons. It is capable of seating one hundred and sixty members comfortably, and will leave ten feet in the rear and eight feet in front for desks and reporters' chairs. It is not as large and capacious a room as the committee would have selected had they had such a one at their disposal; but it is thought by the committee that this room will comfortably accommodate the members of the Convention. I do not know that a delay of a day or two will cause any material delay in our deliberations, and as a member of the committee I am not disposed to press the matter to a vote this morning, preferring allowing members an opportunity to examine the premises for themselves, come to their own conclusions, and so vote upon the matter.

Mr. DEVELIN—I will trouble the Convention just one moment longer. I have measured the room which the committee recommend. Its length is equal to the distance from this partition on my left to the window on my right, and its width is equal to the distance from the door behind me down to the fourth row of seats in front of me, that is all.

Mr. MERRITT—It will give the delegates as much room as is ordinarily allowed to each one in this chamber when the Legislature is in session. There can be comfortably seated in that hall two hundred persons. We have not now and seldom have had recently in this body over one hundred delegates at a time, so there will be considerable space left in the hall for the accommodation of the public. I am not anxious to press this matter to a vote now; but if it is to be postponed for any definite time, I insist that we shall take a vote upon it at the time indicated, and that time should not be later than Wednesday, as provided for in the motion of the gentleman from Richmond [Mr. E. Brooks].

Mr. M. I. TOWNSEND—I hope this postponement will not take place, and I appeal to the gentleman from Richmond [Mr. E. Brooks], who has been here regularly since we met on the twelfth of November, that it will be unkind toward those gentlemen who have come here now for the first time in many weeks, and for the purpose of voting on this question, to compel them to attend again for the same purpose next week. [Laughter.] It is very pleasant to see their faces once more, but their attendance next week can but involve considerable expense and inconvenience on their part. [Laughter.]

Mr. DEVELIN—The gentleman from Rensselaer [Mr. M. I. Townsend] promised me yesterday that he would not tell that joke in Convention. [Laughter.]

Mr. M. I. TOWNSEND—No, I promised to rise in the Convention last night and denounce the gentleman from New York [Mr. Stratton] for adopting a course on his amendment which would bring about this result. [Laughter.] That occasion having passed by, I now make this appeal to the gentleman from Richmond [Mr. E. Brooks].

Mr. ROGERS—I move the previous question, and on that I call for the ayes and noes. [Laughter.]

The PRESIDENT—The previous question is not at all applicable in this case.

Mr. MORRIS—It does not seem to me that there is any necessity for immediate action upon this subject. A delay for two or three days will certainly effect no injury. For one I cannot see any impropriety in sending out two or three reconnoitering committees in order that we may ascertain what may be the best course for this Convention to pursue. For one I am in favor of this motion to postpone the consideration of this report until Tuesday or Wednesday next, as is suggested by the gentleman from Richmond [Mr. E. Brooks], in order that we may get all the information that it is in our power to obtain upon the subject. These committees, the Convention will understand, do not in any way bind us to any particular course of action. They are merely for the purpose of seeking information and reporting the same. It is very certain that we have got to leave this chamber, and the question is, where is it best for us to go? I am sure it would be very desirable to know whether we could be well accommodated in the city of New York in case we should make a flank movement upon that city. [Laughter.]

Mr. EVARTS—I do not know, Mr. President, but it is desirable that the sense of the Convention should be taken upon this question without much delay. In my own judgment, there is an inconceivable repugnance on the part of a great many members of this Convention, and on the best and most public reasons, to holding a session of the Convention in Albany during the sitting of the Legislature. I feel that repugnance myself. In my judgment, the labors of this Convention will be much jeoparded, in their promise of usefulness to this community, if the conclusion of our labors, and the final shaping of the Constitution, be had under such influences as will then prevail. If this Convention shall determine that for reasons either of personal convenience of members from the country, or hostility to the character and interests of the city of New York, or repugnace to the convenience of members residing in that part of the State, they shall exclude from choice that city, as their place of meeting, and shall determine that here is to be the place where the labors of the Convention are to be resumed and concluded, I hope the majority of the Convention will decide that our only solution of the difficulty will be to postpone the further session of this Convention until after the rising of the Legislature. If no other gentleman sees fit to do so, whenever it is determined that, by circumstances or by choice, we are held to Albany as the place of our session, I shall myself deem it necessary to ask the Convention to consider whether we had not better adjourn until the first Wednesday in May. Whether the Convention are ready for that alternative consideration now, or would be better prepared for it on next Wednesday, it is not for me to say; but I wish gentlemen to have it in their minds that, if it be determined that this is the only place where the Constitution can be made, there are many of us who think the only time that it can properly be made here, is after the rising of the Legislature, when we can resume possession of this hall.

Mr. AXTELL—With due respect to the gentle-

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gentleman who has just taken his seat [Mr. Evarts], I think the insinuation comes with an ill grace from him, that the action of the majority of this body has been decided either by motives of personal convenience or hostility to the city of New York, or repugnance to the interests or convenience of delegates from that part of the State. I have listened with some degree of attention to what little discussion there has been on this subject—what little discussion has been allowed upon it—and I have not heard any member who has advocated the continuing of the sessions of the Convention in this city give as a reason that this would serve the personal convenience of the members from the country On the contrary, so far as I know, the action of the majority of this body has been decided by a regard to the public interests. So far as I know, it has been with us solely a question of public propriety and the public interests. We have thought that an adjournment to the city of New York might be used by an unscrupulous press against this body. Judging from the history of this body, and from the attitude of the press toward it, we have thought that an unscrupulous press might use the circumstance of an adjournment to New York city to detract from the character of the body and to damage its work before the people. We are quite certain that there can be no occasion for an unfair attack, merely on account of the fact that we remain in the city of Albany. We have looked at the matter in that light, and not in the light of our own private interests or convenience; and, therefore, I repeat, that for one, I think the insinuation comes with an ill grace from the gentleman from New York [Mr. Evarts].

Mr. EVARTS—If I have exhibited an "ill grace" in what I have said, it is a grace I have borrowed from my opponents in this matter. The subject has always come up in reference to the city of New York, and the members from New York and its neighborhood, their non-attendance here, and I find that those who are nearest to Albany are the most tenacious for keeping this as the place for the sessions of this Convention. Now, Mr. Chairman, I am afraid that if we sit here during the session of the Legislature it will be an imputation against our labors by a *scrupulous* press. What the "unscrupulous press," to which the learned gentleman from Clinton [Mr. Axtell] refers, is, I do not know; but a scrupulous press, a scrupulous public, and a scrupulous public opinion, will make it an imputation against us.

Mr. CURTIS—I rise to a point of order.

The PRESIDENT—The gentleman will state his point of order.

Mr. CURTIS—It is, with great deference, that the gentleman is not discussing the question before the Convention.

The PRESIDENT—The point of order is well taken. The gentleman from New York [Mr. Evarts] must confine his remarks to the question of postponement.

Mr. EVARTS—I pass then from that consideration. Now, sir, on the question of postponement. Those views which have been presented on the one side and on the other are applicable now, and on Wednesday next will be equally apposite. If this Convention are ready now to finally determine this matter, I have no objection, but I trust that if we at any time fix upon Albany as the place at which our sessions will be continued, we shall fix upon a day after the rising of the Legislature.

Mr. FRANCIS—I hope the motion for postponement will prevail, not with a view of favoring New York, or any other place in particular, but to enable members of this body to visit the City Hall, and judge for themselves with reference to the accommodations offered us there by the city of Albany.

The question was put on the motion of Mr. E. Brooks, to postpone the consideration of the report of the Special Committee, and it was declared carried.

Mr. MERRITT—I would state in connection with this matter, that some person will be present to show the rooms to any of the delegates who may desire to examine them.

Mr. MERRILL—I offer the following resolution:

Resolved, That debate in Committee of the Whole on the report of the Committee on the Judiciary be limited to ten minutes to each speaker, no member to speak more than once on any proposition except by unanimous consent.

Mr. SILVESTER—I move to lay the resolution on the table.

The question was put on the motion of Mr. Silvester to lay on the table, and, on a division, it was declared lost, by a vote of 35 to 49.

Mr. E. A. BROWN—I move to amend by striking out "ten" before the word "minutes" and inserting "twenty."

Mr. PRINDLE—I move to amend by inserting the word "fifteen" before the word "minutes."

The question was put on the amendment of Mr. Prindle, and it was declared carried.

The question recurred on the resolution of Mr. Merrill as amended.

Mr. DUGANNE—I ask for a division of the question.

Mr. MERRILL—It seems to me that that will defeat the object of the resolution; all the gentleman will have to do in order to make an hour and a half speech is to resume his seat for a moment and then go on again. If there is an obvious propriety in any gentleman making such a speech I suppose there will be no difficulty in obtaining unanimous consent.

Mr. DUGANNE—I withdraw my call for a division.

Mr. BARTO—I renew the call for a division.

The question was then put on the first division of the resolution, limiting debate in Committee of the Whole on the report of the Committee on the Judiciary to ten minutes to each speaker, and it was declared carried.

The question was then put on the second division of the resolution, that in such debate no member should speak more than once upon any proposition, except by unanimous consent, and it was declared carried.

Mr. STRATTON—I call for the consideration of the resolution offered by me yesterday.

The SECRETARY read the resolution as follows:

Resolved, That a committee of five be appoint-

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ed to ascertain and report to this body what accommodations can be provided in the city of New York for the sessions of this Convention after the first day of January next.

Mr. STRATTON—I wish to amend the resolution by inserting after "New York," the words "without expense to the State," so that the resolution will read as follows:

Resolved, That a committee of five be appointed to ascertain and report to this body what accommodations can be provided in the city of New York for the sessions of this Convention after the first day of January next, without expense to the State.

Mr. GRAVES—Is a substitute in order?

The PRESIDENT—A substitute is in order.

Mr. GRAVES—Then I offer the following as a substitute:

Resolved, That when this Convention adjourns for vacation it adjourn to meet at this place on the first Tuesday in May next.

It seems to me, Mr. President, that this is a proper time to consider this matter.

Mr. ALVORD—I rise to a point of order—

The PRESIDENT—The Chair anticipates the point of order [laughter]; that this amendment is not germane to the original resolution?

Mr. ALVORD—Yes, sir.

The PRESIDENT—The point of order is well taken.

Mr. MERRILL—I move to lay the resolution on the table.

The question was put on the motion of Mr. Merrill to lay Mr. Stratton's resolution on the table, and it was declared lost.

Mr. DUGANNE—I call from the table the resolution that I offered yesterday, and offer it as an amendment to the resolution of the gentleman from New York [Mr. Stratton].

The SECRETARY read the resolution as follows:

Resolved, That two additional members be appointed upon the committee just raised, and that said committee be instructed to extend its inquiries to the city of New York, to communicate with the board of supervisors of that city thereon and report on the 18th instant.

Mr. BICKFORD—I am informed by the papers this morning that the city of New York is at this time wholly inaccessible. [Laughter.] It is therefore quite profitless to consider that resolution now, as there is no means of reaching that city, and it would be an imposition upon members to appoint them upon the committee called for by this resolution. [Laughter.]

Mr. E. BROOKS—If the gentleman will allow me I wish to inform him that he is wholly misinformed in regard to that matter.

Mr. DUGANNE—Has that committee, of which I spoke in my resolution as just raised, been discharged upon the report of this morning?

The PRESIDENT—It has not.

Mr. ALVORD—It seems to me entirely proper that inasmuch as the original proposition has been referred over until Wednesday next, this whole matter may very appropriately go over until that day. I therefore move that the consideration of this resolution be postponed until Wednesday next.

Mr STRATTON—My object in bringing it up this morning was that we might have a report from the committee contemplated by the resolution by next Wednesday, so that the Convention could then take their choice between the accommodations offered by Albany, and the accommodations offered by New York.

Mr. CURTIS—I think the motion of the gentleman from Onondaga [Mr. Alvord] defeats the conclusion to which the Convention had previously arrived. As I understood the proposition of my colleague from Richmond [Mr. E. Brooks], its object was, that on Wednesday next we might have a comparison of places and of views in regard to this matter.

The question was put on the motion of Mr. Alvord to postpone, and it was declared lost.

The question then recurred on the resolution of Mr. Duganne.

Mr. MORRIS—Is an amendment in order?

The PRESIDENT—An amendment is in order.

Mr. MORRIS—I would like to add at the close of the resolution under consideration the words: "or as soon thereafter as practicable."

Mr. DUGANNE—I accept the amendment.

Mr. COMSTOCK—What is the resolution to which this is an amendment?

The PRESIDENT—The resolution will be read and also the amendment.

The SECRETARY again read the resolution offered by Mr. Stratton yesterday, and also the substitute for it offered by Mr. Duganne.

Mr. COMSTOCK—If I understand the substitute offered by the gentleman from New York [Mr. Duganne], it refers to the committee which has reported this morning.

The PRESIDENT—It does.

Mr. McDONALD—I propose an amendment, that the committee be instructed to inquire elsewhere, in any other city.

The question was put upon the amendment of Mr. McDonald, and it was declared carried.

The question was put on the substitute offered by Mr. Duganne, and it was declared lost.

The question then recurred on the original resolution offered by Mr. Stratton.

Mr. McDONALD—I now offer the same amendment to the original resolution, that the committee be instructed to inquire elsewhere in any other city.

Mr. STRATTON—I accept that amendment.

Mr. ALVORD—I move another amendment to the resolution, "that there shall be a committee of five, three of whom shall be of the committee heretofore appointed upon this subject."

Mr. E. BROOKS—I submit that that proposition has just been rejected by the Convention. That is an indirect way of overruling the will of the majority of the Convention.

The PRESIDENT—The gentleman from Onondaga [Mr. Alvord] will please read his proposition.

Mr. ALVORD—It is, "that there shall be a committee of five, three of whom shall be of the committee heretofore appointed upon this subject."

The PRESIDENT—That is substantially the same proposition that has already been voted down.

Mr. E. BROOKS—I move the previous ques-

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tion upon the adoption of the pending resolution.

A sufficient number voting in the affirmative, the previous question was seconded, and the main question ordered.

The question was then put upon the resolution of Mr. Stratton as amended, and it was declared carried.

Mr. M. I. TOWNSEND—I offer the following resolution:

WHEREAS, Any provisions which can be adopted by this Convention for the suppression of bribery and corruption in legislative and State offices, if accepted by the people of the State, cannot take effect for a long time yet to come, and

WHEREAS, The offenses referred to are now so frequent as to produce alarm in the minds of all good citizens, and

WHEREAS, Except in rare instances there have been no adequate attempts to ferret out or punish offenses of this character, and

WHEREAS, The punishment of such offenses is a matter in which every portion of the State is equally concerned, therefore

Resolved, That the Legislature be and they are hereby respectfully requested to pass such needful and proper laws as shall provide for the payment by the State of all such necessary expenses as shall be incurred by any county in prosecutions for such offenses, and as shall secure the efficient aid of prosecuting officers in ferreting out and punishing the guilty.

Mr. M. I. TOWNSEND—I propose to debate the resolution.

The PRESIDENT—The gentleman proposing to debate the resolution, it lies on the table under the rule.

Mr. GRAVES—Is it in order now to call up the resolution that I have already offered?

The PRESIDENT—The gentleman may call for the consideration of his resolution, and it may be considered by unanimous consent.

A DELEGATE—I object.

The PRESIDENT—Objection being made, the resolution goes over for the day.

Mr. CHURCH—I call for the consideration of the resolution that I offered yesterday.

The PRESIDENT—The Secretary will read the resolution:

The SECRETARY read the resolution as follows:

Resolved, That this Convention will proceed to perfect the article on the judiciary, and provide for submitting the same to the people, and that the Convention will then adjourn, subject to be re-assembled by the Legislature for the purpose of completing its business, and such adjournment shall take place on the 20th day of December, instant, at twelve o'clock M., unless the article on the judiciary shall be sooner perfected.

Mr CHURCH—I only desire to say a word or two upon this subject. It seems to me that the time has arrived when we should make some disposition of the labors of this Convention with a view to its adjournment, permanently or otherwise. I am not tenacious as to the form of the action which this Convention may take on this subject. The resolution which I offer contemplates the perfection of the article upon the judiciary and the submission of that article to the people. So much we provide for certainly. I make this provision because I regard that subject as the most important and necessary of any in relation to an amendment to the Constitution. There is more necessity for improvement in relation to the judiciary than any other subject, and, therefore, I do not propose to leave that subject to any uncertainty. As to all other matters connected with an amendment to the Constitution, I propose to leave it to the determination of the representatives of the people, who will soon assemble here. I would leave it for them to say whether this Convention shall re-assemble to complete its labors, presuming that the Legislature will reflect the wishes of the people on this subject. I have no objection to submitting any action which this Convention has already taken upon any subject other than the judiciary. While it would be very desirable for us to finish our labors, it seems to me it is important and proper to consider the surrounding circumstances in which we are now situated. The Legislature is about to convene. I regard it as open to serious objection that we should continue the labors of the Convention during the session of the Legislature for various reasons which must occur to the mind of any gentleman who has any experience in such matters. I agree entirely with the remarks of the gentleman from New York [Mr. Evarts], which he made this morning. However desirable it may be for us to finish our labors and complete a Constitution to propose to the people, we must look the circumstances by which we are surrounded squarely in the face. We must accept the situation and determine our action accordingly. If gentlemen desire to adjourn the Convention to a day certain, to the first of May, or any other time, I am entirely content; but I do not believe it practicable for this Convention to continue its labors successfully during the session of the Legislature. Whether we take our papers and march over to the inconvenient council chamber in the city of Albany, or go down to the foot of State street in the third story of some building, or whether we take the Hudson River railroad to the city of New York, or anywhere else outside of the city of Albany, I do not believe that this Convention can successfully complete its labors outside of this Capitol. This is the place to hold the Convention, and the Convention, in my judgment, ought to be in session to complete its labors disconnected with the Legislature of the State. For these reasons I have offered this resolution. It seems to me now is the time when we ought to decide this question.

Mr. GRAVES—I now offer a resolution as an amendment to the resolution of Mr. Church.

The SECRETARY read the resolution as follows:

Resolved, That when this Convention adjourns for vacation, that it adjourns to meet at this place on the first Tuesday in May next.

Mr. GRAVES—In offering this resolution, I do not intend by it to express the opinion that I am decidedly in favor of its provision, but rather to leave it for further consideration. It is quite evi-

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dent that we are now laboring under some embarrassments in the attempt to provide a suitable place for our future deliberations. It is quite evident, too, that we shall have some difficulty in getting accommodations in this vicinity sufficiently commodious for the members of this Convention. To my mind there are some good reasons why we should adjourn this Convention until the Legislature has closed its session. Personally I desire the Convention to resume its labors and to reorganize at as early a day as is convenient. But there are some circumstances which induce me to believe that the public interest would be better served, that the Constitution which we make would meet the greater approbation of the people, by completing the work after the close of the Legislature. I can see some good reasons, without assigning them at this time, why it would be improper for us to be in session here while the Legislature is in session. I therefore introduce the resolution, that the opinion of this Convention may be ascertained distinctly to-day, whether we shall meet again in January, or procrastinate our session until May.

Mr. CURTIS—I move that the further consideration of this subject be postponed until Wednesday next.

Mr. OPDYKE—I hope that motion will prevail. There seems to be a great propriety in considering all these propositions at the same time. I agree with my colleague from New York [Mr. Evarts], that it will be better to adjourn until the first of May, than to sit here at the same time the Legislature is in session. I think there are very grave objections to this. Besides, I believe the convenience of the members would be promoted by an adjournment to New York, and that we would accomplish our labors at an earlier period. I feel that it would be better for this Convention, better for the convenience of the members, and better for the public interest, if we could complete our labors this winter, rather than mortgage our time for another year. But, as I have already said, that cannot be done without continuing our session along with the session of the Legislature, in this small city, which will then be overcrowded, and where we will be exposed to the necessary collison which, in some respects, will take place between the two bodies. I therefore hold that it is better, if we cannot go to the city of New York, to adjourn over until May. I rose simply to say that there would be great propriety in considering all the various questions relating to this subject, at the same time on Wednesday next.

Mr. CHURCH—I am quite willing that this resolution should go over if desired.

The question was put on the motion of Mr. Curtis, and it was declared carried.

The PRESIDENT announced the following committee under the resolution of Mr. Stratton, with reference to securing accommodations for the holding of the sessions of the Convention in the city of New York: Messrs. Stratton, Beadle, Flagler, A. R. Lawrence and More.

The Convention again resolved itself into a Committee of the Whole upon the report of the Committee on the Judiciary, Mr. C. C. DWIGHT, of Cayuga, in the chair.

The CHAIRMAN announced the pending question to be on the amendment proposed by the gentleman from Steuben [Mr. Spencer].

The SECRETARY read the amendment as follows:

Amend section 6 by striking out all after the word "law," in line three, and insert the following:

SEC. 6. The State shall be divided into eight judicial districts, of which the city of New York shall be one, the others to be bounded by county lines, and to be compact and equal in population, as nearly as may be. There shall be four justices of the supreme court in each district, and as many more in the district composed of the city of New York as may be authorized by law. The present justices of the present supreme court shall be justices of the supreme court hereby established during the term for which they were respectively elected. Provision shall be made by law for the election of justices of the supreme court by the electors of the several judicial districts.

Mr. FULLER—I would suggest the propriety of striking out the latter part of this amendment, so as to present the question of the organization of the supreme court by itself, that we may have a vote upon it apart from any other proposition in the amendment.

The CHAIRMAN—The object of the gentleman can be obtained by a division of the question.

Mr. SPENCER—I am disposed to accept that modification of the amendment proposed by myself. The arrangement of the body of the judiciary article proposed by the committee is such that the matter is disposed of in a form different from that presented by my amendment; and with a view to present the naked question of the continuance of the present organization of the supreme court, I provide for those subjects in a future section. I will consent to amend the proposition as suggested.

The proposition was so amended.

Mr. FOLGER—I will say a word or two, and only a word or two, in defense of the report of the committee so far as it relates to this question. The proposition of the gentleman from Chenango [Mr. Prindle] having been disposed of, the issue now seems to be squarely raised between the system proposed by the Judiciary Committee and the present arrangement of the supreme court as contained in the Constitution of 1846. The gentleman from Steuben [Mr. Spencer] is correct when he says that the difference between the two systems is small. I do not understand him to object to that difference which the Judiciary Committee proposes. I do not understand him to say that that is a defect and that it vitiates the proposed system. I have a right to infer, and do infer, that he considers it an improvement. If so, then it appears to me the argument ends here. If the system which we propose is identical with the system which now exists, with only one difference which makes in its favor, why does he offer a substitute for the one we propose? He must assent by his amendment that the present system is good, and if, then, in any part we propose to make it better, why not accept that which we propose? I agree with the gentleman from Steuben [Mr. Spencer], that the difference between

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the two systems is small; but I conceive that difference is one of importance. The present supreme court is arranged so that the judges sit in eight separate districts. The Judiciary Committee proposes that they shall sit in four departments. The system of the Judiciary Committee further proposes that no judge shall sit in review of his own decision, and that the general terms shall be made up from two districts instead of one, and that the judges shall be elected by departments. There is nothing in the proposed system which is additional to that now existing in practice, but what may be obtained by legislation, except the single provision that the judges shall be elected by departments. The Legislature may say as to the present system of the supreme court, that no judge shall sit in review of the decision in which he has participated; they may say in reference to the present system of the supreme court, that the general term shall be made up from two adjoining districts: but the Legislature cannot say, in relation to the present system, that the judges shall be elected by departments. The gentleman from Ulster [Mr. Cooke], the other day, queried why the members of the Judiciary Committee did not exhibit to the Convention the merits of the system which they propose. And perhaps, indeed, it was a sincere inquiry, and one naturally arising out of the circumstance of our remaining until of late silent, while this part of our system was under debate. And I now desire to satisfy that query by showing how, in one particular, in my opinion, the system proposed by the standing committee has merit. The difference, as I said, is small. It has been to some extent explained, but this one feature has not met with the consideration of the Convention, that is, that these judges shall be elected by departments. This is the feature of it which persuaded me to give my vote in committee for this system in preference to the existing system of the supreme court. Let us see how that is a benefit. Let us suppose a community in this State which is the focal point of business and the wealth of the State, where great and varied interests accumulate and intensify. Let us suppose such a community to be mainly of one political cast. Let us suppose that political preference to be exercised with great intensity and uniformity, and some times, we may say, without much reflection. Let us suppose that the party having that preference shall grow to number its majority by thousands and tens of thousands, and then we have a community where, if a person secures a party nomination, he is almost certain of an election by sheer party strength. Let us suppose a community where a person has been nominated for judge of a high court, whose alleged character and reputation were such that, when the ticket upon which he was running succeeded by forty or fifty thousand, he himself only succeeded because of that reputation and character by some eight hundred majority. Can we not also suppose that if that community had introduced into it or added to it some other element of reflection or care or solicitude as to the character of the judiciary in the State or those elements in greater degree, that the result would have been different and that the eight hundred majority would have been overcome? If a person is nominated, the allegations against whose character appear to be so well founded as that his own party hold back to the extent of thousands and tens of thousands from supporting him, and if near the community from which he is nominated lies a long island, and that near it are rural districts, lying along a great river, would not those outlying, these rural districts, if they should be given a chance, express their opinion as to the fitness of such a nominee?—and can we not see that one cause of complaint against our judicial system would be lacking? This is why I gave my consent to the division of the State into four departments. That was one reason. You enlarge by such means the constituency of the judges. You give greater chance for the selection of candidates, greater chance for an element to be introduced into the ballot-box, of deliberation, and care, and solicitude, and intelligence. Hence I conceive that this feature of an election by departments makes a very important difference, although it looks small upon paper. A very important difference, and one which will work out great advantages in the selection of a judge of the supreme court. The other differences between the existing system and that proposed by the Judiciary Committee the Legislature may provide for. It may provide for a general term from two districts now as well as they can under the system of the Judiciary Committee. They may provide for no judge sitting in review of a decision in which he participated, as well now as under the system reported. Then comes up the very objection, and indeed the sole objection, I have heard urged in this Convention with any force, against the present system of the supreme court, which is the contrariety of decision, and which was stated so forcibly and exhaustively last evening by the gentleman from Montgomery [Mr. Baker]. Now, as to that, let me say that humanity is always bounded by two forces. One is what it desires and the other is what it can achieve. Undoubtedly we all desire that there should be uniformity and exact uniformity in the annunciation of what is the law of the land. But can we always achieve that? I conceive that we cannot always achieve it, for there will be contrariety of decision at times even in a single court. There will be in a single court assertions of what is law and here will be reversals of those assertions. It would undoubtedly be a great thing if in this State there should be no contrariety in the opinion of the courts as to what is the law of the land. But there must be a balancing of evil. We must so hold the scale that we can put it upon an equipoise or as near that as possible, and get the greatest good with the least evil. Does the gentleman from Montgomery [Mr. Baker] suppose the bar of this State would accept a return in our judicial system to one supreme court holding a single term? I think they would not; I know they would not. I need not reiterate the argument of the gentleman from Rensselear [Mr. M. I. Townsend] which was advanced the other day as to the views of the bar upon the question, of the improvement of the present system of holding courts over that from 1822

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to 1846 and the advantage, of the interest, of a client in that respect. The bar of this State would never consent to a single supreme court holding its terms in a single place. I do not know even if there should be consent that it would be practicable. I believe that this week there are sitting in this State perhaps as many as sixteen special terms. Would the gentleman from Montgomery [Mr. Baker] consent that all this business be done at one place? Consider that it is a business which, from its nature, cannot be postponed from month to month and be heard, determined all at one time, and once a year. It must be decided immediately, almost upon the instant, of the motion, and there must be opportunity for motion to be made almost immediately. Let one conceive the business of these sixteen special terms centered at Albany, or at any other one place. Either there must be an inroad of attorneys here, which would frighten the good people of Albany (for they must come from all parts of the State to attend to their business), or there must be the old system of agents here to do the business which comes from all over the State. And from that and the consequent practice, I say, and the bar will say, "Good Lord, deliver us." I remember of one instance in my own practice, before the present system began, where my brief, sent to Albany to able counsel, was returned unopened, with a curt remark indorsed upon it that the law was well settled against me, and referring to a decision, which reference showed that the counsel had never read the brief and did not know what was the point involved, and not because the counsel to whom I sent my papers did not mean honestly to attend to my case, but because he was overwhelmed with business and had not time to attend to that which I sent him. I am induced to believe that we cannot attain the establishment of a single supreme court in the State. We must take the next best. We must balance the difficulties and the inconvenience and the impossibilities of a single supreme court, or a single term of that court, with the evils of a contrariety of decisions, and strike the balance as near as we can. We have made an advance in this respect by saying that instead of eight general terms there shall be four. By our plan, the plan of the Standing Committee, if carried out, the Legislature will draw together four general terms from the eight districts, which, I think, will make a good and satisfactory general term, and which will at least diminish by one half, the liability to contrariety of decision, and secure so far, uniformity and reliability.

Mr. LUDINGTON—How much would the reorganization of the State into four departments lessen the conflict of decisions, from what they would be if the eight districts were continued?

Mr. FOLGER—I think Daboll will answer that query. If eight general terms make one hundred conflicting decisions, I suppose four would make but fifty.

Mr. LUDINGTON—Would not the four departments be required to decide as many cases in the aggregate as all the eight judicial districts?

Mr. FOLGER—I suppose that they would. But I suppose that each general term would adhere to the precedents set by itself. And that thus there would be, by one-half, more uniformity, under a system of four general terms, than under a system of eight general terms.

Mr. POND—Did not the gentleman say just now that the same court sometimes reversed its own decisions? How does he provide against a repetition of that by a system of four departments?

Mr. FOLGER—That is inseparable from any court. You see it under any system to a greater or less extent.

Mr. POND—Has the gentleman made allowance for that in his Daboll illustration?

Mr. FOLGER—I have not made allowance because arithmetic makes no allowance for the same man changing his own mind and has no rule for that case. [Laughter.] That is inseparable from any court; the court of appeals is a single court, and yet it at times reverses or explains and modifies its decisions, very much to the disgust, undoubtedly, of the gentleman [Mr. Pond] himself. I conceive that if one supreme court would achieve uniformity of decision, or make any considerable approach to it, then, by as much as we diminish the distance between eight supreme courts and one supreme court, we advance so far toward uniformity of decision. It must be so.

Mr. FULLER—I would like to ask the gentleman a question. If the judges are to be elected by departments, and there is to be but one general term, what is the use of dividing each department into two districts?

The CHAIRMAN—The time of the gentleman from Ontario [Mr. Folger] has expired.

Mr. SEAVER—The gentleman from Ontario [Mr. Folger] has not addressed the committee on this subject. I move that he has unanimous consent to continue his remarks.

Mr. FOLGER—I propose to adhere to the rule.

Mr. COMSTOCK—In answer to the question of the gentleman from Monroe [Mr. Fuller], I shall move to strike out so much of the article, if it be excepted by to this committee. I think myself it is an excrescence on the article.

The question was put on the amendment of Mr. Spencer, and it was declared lost,

Mr. COOKE—I propose to introduce the substitute I intimated yesterday in my remarks.

The SECRETARY read the sections as follows:

SEC. —. There shall be a supreme court to consist of not less than nine justices. General terms shall be held by not less than three justices, to be designated according to law. The supreme court shall have original, general jurisdiction and the same appellate jurisdiction as has heretofore been vested in the supreme court of this State.

SEC. —. The State shall be divided into a convenient number of circuits, not less than fourteen, in each of which there shall be a circuit judge, who shall possess the powers of a justice of the supreme court in the trial of issues of fact and of law, the hearing and decision of motions, and in criminal cases, and at chambers; provided, that no county shall be divided in the formation of circuits. Provision may be made by law for one or more additional circuit judges in the city and county of New York.

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Mr. COOKE—I desire to say that this plan contemplates that the justices who sit in banc shall be elected upon the general ticket, and it leaves it to the Legislature to increase the number as necessity shall require. It further contemplates that the Legislature shall provide for the holding of terms around through the State at different points as in a manner stated by me yesterday.

Mr. HALE—The gentleman from Ontario [Mr. Folger] who last addressed us, said he had heard but one objection raised to the present system, and that was the contrariety of decisions. I wish to appeal to him and to all the members on this floor whether there is not another great evil which results from the present system, and which will result from the adoption of the principle recommended by the majority of the committee—that is, the power of the judges in certain localities to absolutely control the interests of those localities without any adequate remedy. The gentleman in advocating the plan of election proposed by the majority of the committee alluded to certain localities of the State. I think it just as well to call them by name as by geographical description. I will take the first district, the city of New York. There is a city of great population, a city which has immense interests, and where the judges, as a matter of necessity, have immense power. I do not desire to say any thing against the judges who are there now. Many of them I know to be men of integrity. But suppose that under the influences which sometimes control that city, judges get into power who are not honest; that a majority of the judges upon the supreme court bench, in the city of New York should not have the qualifications of integrity, of learning, and ability which are necessary to fit them for that position. What is there in this system proposed by the majority of the committee which gives the slightest relief from the power which they may exercise over that community? Now, it is said that joining two districts in a department gives that remedy. I ask this committee whether, instead of remedying the matter, it does not extend the evil; whether it does not extend the power of the influences that control the city of New York over the whole of the second district, embracing the island and river counties. It seems to me there is but one remedy for this evil. Every lawyer knows that there is an immense number of cases coming before the judges at special term which are appealable to the general term, but are not appealable to the court of appeals. We know there are many, multitudes of orders which cannot be carried to the court of appeals for review which involve immense interests, by which the property and liberty of the citizens of the State are affected. If we elect an appellate tribunal by the people of the State at large, we put them beyond the reach of local influences, either in New York or anywhere else. If decisions in a particular locality are wrong, and influenced by improper considerations, the evil will be limited, because the large mass of orders which are appealable only to the general term, may be reviewed by judges elected by the people of the State at large. This would break up this system of localization, or of "rings," as it is sometimes called. And for these reasons I favor any proposition which looks to the election by the electors of the State at large, of an appellate bench of the supreme court.

Mr. PIERREPONT—The danger which the gentleman from Essex [Mr. Hale] seems to suppose may exist in this State, and which particularly he seems to imagine may exist in the first district, the district of New York, he will not find, I apprehend, to be entertained by any gentleman from that city. He will find from the city of New York, in this Convention, gentlemen of both political parties, and I fully believe that no gentleman in this Convention, from either political party will say that he believes that, if the judges in the city of New York were elected to hold their places until the age of seventy years, there would be the slightest danger of any of those evils which he supposes; not the slightest. The moment you place a man in a judicial position, and he understands that he is independent, and that he is placed there until the age of seventy years, he becomes abundantly conservative. That is the tendency, that is the experience of the world. The judges of the city of New York, as any gentleman will find, if he examines the subject, have performed labors which have been truly colossal. They have been gentlemen who have not been well rewarded for their time, but as a rule they have satisfied the community, who have felt that justice has been done. Now, the apprehension that when you have placed men upon the bench, and given them a position in the supreme court to the age of seventy years, they will have so much power as to trample upon and destroy the liberties or the rights of the people, is not entertained, I undertake to say, by any gentleman in the city of New York. Our experience has not thus far been of the kind to awaken any such fear. And it will be found, if we undertake to have a supreme court in the modes suggested, that the great size of the State will make it impossible, as was stated by the gentleman who took his seat a short time ago, and as the chairman of the Judiciary Committee remarked, to organize such a court, to send all briefs back to the lawyers duly noticed. It will be found that they will be returned as was his, unopened; the duties of the counsel will not have been performed and the rights of the client will not have been attended to. I think that any one who has observed the course already adopted in this Convention, would have been led to suppose that the city of New York was somehow or other accursed by a judiciary which was imperilling the rights of the people there. But yet when you have heard gentlemen of both political parties speaking upon this subject, you have not discovered that they felt any such alarm. The alarm seems to have been felt outside of the city of New York, and the fear is entertained by those upon whom no evils could fall arising out of any system in that city. It will be time enough to be alarmed about the condition of the city of New York when you shall find a gentleman from New York who shall arise here and awaken your fears about the danger of the judges of the city of New York doing injustice to the

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citizens of that commonwealth. It is well known that there have been instances in the city of New York where the people have not been altogether satisfied. So has it been in other parts of the State. But when you take the whole together, and when it is all considered, and when you see it all, you will find that the judges in that city have done their duty; that they have acted with honor and fidelity, and have performed the most herculean labor of any judges who have sat upon the bench in any country in the world. The single question of the New Haven railroad alone was a case which in itself required more time, more labor, more research, more diligence, as much fidelity, and greater comprehension than any case that has been tried of which lawyers have any knowledge. And it was done in the city of New York to the satisfaction of the entire community, And other cases have been treated in the same way, and the people of the city have not felt any injustice from the labors of their judiciary. The complaints which are constantly heard of arise from a fear which, I repeat, is entertained outside of the city, not inside of it, and so far as I know of, not expressed by any member from that city.

Mr. COOKE—I desire to say a word simply in regard to this matter of holding special terms. This system does not contemplate that the justices of the supreme court shall hold special terms. The plan is that the judges in their districts shall hold special terms, and that they shall be kept constantly open.

The question was put on the amendment of Mr. Cooke, and it was declared lost.

Mr. McDONALD—I offer the following amendment to this section:

The SECRETARY proceeded to read the amendment as follows:

Strike out all after "the," in line three, and insert: "The State shall be divided into three departments, the first and second judicial districts to be the first department; third, fourth and fifth judicial districts the second department; sixth, seventh and eighth districts the third department. There shall be thirty-six judges, twelve in each department, four of whom shall reside in each judicial district. The Legislature shall have power to provide for an additional justice in each of said departments. The Legislature, after such enumeration of the inhabitants of the State, may redistrict the State in eight judicial districts and three judicial departments—the districts not to divide counties and the departments not to divide districts."

Mr. McDONALD—The only change that is proposed by this amendment, as will be seen, is to reduce the departments from four to three, and leave the districts as they are. I only offer it in order to accomplish what is desired by this Convention with the least possible change upon the present method and the present organization of the courts. The whole argument has been gone over, and with this statement I submit it to the committee for their approval, on the ground that it is believed that three departments will do the business, and thus get rid of this uncertainty of decision.

Mr. YOUNG—I would like to ask the gentleman a question. Does he propose in his amendment that the judges be elected, as they now are in the districts?

Mr. McDONALD—There is no proposition in regard to the election in the amendment, as there is nothing of the kind in the proposition which it is proposed to amend.

Mr. YOUNG—There appears to be a chronic disease in this Convention which exhibits itself in the desire to have the State divided into large districts. But I have been unable to discover any reason for it. The report of the Committee on the Organization of the Legislature proposed to divide the State into eight senatorial districts. And here, again, we have the same thing repeated in dividing the State into four judicial departments. I am at a loss to understand why there is such a longing desire for this great reform of making large districts in this State, unless it shall be that, in the future, we shall not have an opportunity of knowing any thing about the character, the ability and judicial standing of the candidates for whom we are to vote. Now, so far as I am concerned, I am well suited with the present organization of the supreme court; and no amendment, or plan, or report, has been suggested here which, in my judgment, will be any improvement upon the present system. At any rate, we, living in the third judicial district, are well suited with our judges, with the organization of the district, and with the tenure of office, and we desire no change. I do not see why gentlemen here are solicitous of having us united with another district, so that we shall have to travel as far again to attend the general terms, and will not be enabled to know as much of the character of the men for whom we are to vote for judges as we can now know as our district is at present constituted. It appears to me that from seven to nine counties make a district large enough.

Mr. McDONALD—It is proposed by this plan to require four judges to reside in each department of the general terms. The object of the plan is simply to continue the present system as near as we can, at the same time getting rid of this contrariety of decisions.

Mr. YOUNG—The object is to have three places for holding the general terms.

Mr. McDONALD—Not at all; they are held in every district.

Mr. YOUNG—Instead of traveling eight, ten or fifteen miles to attend general terms, we must travel a hundred or one hundred and fifty miles. Is that what the gentleman wants?

Mr. McDONALD—The gentleman misunderstands. The idea is to have the general terms held, as they are now held, in every district, to get the districts as they are now, except that there will be three separate general terms, and that they will go from one district to another, so the people will be accommodated as they are now.

Mr. YOUNG—Then the gentleman proposes to have a migratory court—a traveling court. I am not convinced by the gentleman that it is any improvement upon the present system. I now propose to say a word in regard to the judiciary of the city and county of New York. There has been a good deal of fault found,

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as the gentleman from New York [Mr. Daly] stated, about the judges of that city and county. But I apprehend that the fault comes from the "outs," who are eternally clamoring about those who are *in* power. It is a disease with which the American people are infected, always to be finding fault with the party in power. Consequently, the party in the city and county of New York who are out of power, and who see no way of ever getting in power, are continually clamoring about those who are elected by the dominant party and who are likely to continue to occupy their position. I have been in New York, in attendance upon the courts, as much as any place out of my immediate county. And I state that, in my opinion, the judges of New York city compare favorably in honesty, in candor, uprightness and ability with the judges in any other part of this State. One of those judges who has been pointed out here by some gentlemen of this Convention, I have been acquainted with ever since he arrived at the age of manhood, and I believe the charges made against him are erroneous and unfounded. I believe him to be an upright and honest judge. Now, I will say a word or two in regard to the conflict of decisions so much complained of by gentlemen on this floor, to avoid which, it is proposed to divide this State into four judicial departments, and to continue the superior court of the city and county of New York, and the court of common pleas in the city and county of New York, and the superior court of the city of Buffalo—with which you have seven different courts under your proposed plan, all of which hold general terms, from which appeals are taken directly to the court of appeals. The decisions of these seven different courts, held at different times, and in different parts of the State, will be as likely to conflict as the decisions of the eleven different courts which exist under the present system. Some gentlemen have stated that three of these courts are local courts; but I ask you what security you have, or what assurances you have that the four courts which you are organizing—the four branches of the supreme court, will make decisions which will not conflict with each other? What assurance have you that the decisions of the supreme court and the decisions of the court of common pleas of New York city, and the decisions of the superior courts of New York and Buffalo will not conflict? And I ask where is the remedy you propose against those conflicting decisions in this report? It is impossible, in my judgment, to organize a court which is not a court of last resort, but an intermediate court between the circuit and the court of appeals, which will not make conflicting decisions, and which will make decisions entirely reliable. It is not in the nature of things. Gentlemen have mentioned a number of instances where there have been conflicting decisions between the several judicial districts of this State. Now suppose we had but one court, and had but one decision upon any one point, and that decision was wrong but was nevertheless relied upon. Would not it be infinitely worse than if we had two conflicting decisions upon the same point?—because every lawyer then would have his own opinion in regard to the question of law involved in those conflicting decisions. But if there was but one decision, and that decision was wrong, the profession and the community generally would follow that decision, and be misled by it, until the decision was corrected by the court of appeals. I say it would be better to have conflicting decisions in the supreme court, upon doubtful and difficult points of law, than to have one single decision which might be erroneous, as was the case in the decision involving the constitutionality of the law prohibiting cattle from running at large on the public highways of this State, passed by the Legislature in 1862. That case is reported in 44 Barbour, and holds that that law is constitutional. The profession generally, and the people, acted upon that decision because there was no conflicting decision made by any other court. Yet the court of appeals decided that law unconstitutional, and the Legislature at its last session, considered it necessary to amend it, and to pass an act creating a bar against action for damages, which could be brought by those who had their cattle taken up on the highway and sold. We must take into consideration that since 1846 the courts of this State have had to settle the law of an entirely new system of practice. In construing the Code they could not resort to the decisions of England, or any other country for light or authority. They had to settle the cases upon principle and depend upon their own judgments; the only light afforded them was the arguments of counsel. There have been many new reformatory acts passed since that time, the construction of which involved many very difficult and perplexing questions of law. The constitutionality of most of these acts originated in these inferior courts, and there could be no light afforded by the decision of the courts of other countries. And taking all these things into consideration, I do not think our reported cases deserve the censure which has been heaped upon them by gentlemen of this Convention. We should take into consideration another fact, that there has been a great competition among bookmakers. The publishers of our reports have been anxious to get every decision in their power. They have reported special term decisions, and county court decisions, and I believe there is one decision in Howard's Practice Reports of a justice of the peace. A reward has been offered for the decision of every judge who could be induced to write out an opinion upon any point, whether it involved a new question of law or not; and consequently our reports have become trashy. I deny that these reports are not used and cited as authority in other States. I have traveled through many of the Western, and over the Eastern States, and in almost every lawyer's library that contained reports at all, I have found the reports of the State of New York in connection with the reports of their own State, which lawyers deemed necessary to have in addition to elementary works.

Mr. DALY—I beg leave to state that my remarks were limited to one class of reports—Barbour's reports. They have had less weight out of the State than any other. I adhere to that opinion; it is the result of very considerable experience.

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Mr. YOUNG—I will agree with the gentleman that Barbour's reports have less weight in other States than the reports of the court of appeals. But I have seen in the law libraries of Michigan, Wisconsin, Illinois, Minnesota, Iowa, Connecticut and Vermont all the reports of this State, including the gentleman's [Mr. Daly's] own reports; and I have heard them cited as authority by counsel arguing cases in the appellate courts of most of those States, and cited as authority by the judges. The State of New York has given the law to almost every State in the Union. She is the mother of the law of this country. I am well suited with the present organization of the supreme court, and I believe the people generally are well suited. I have heard no complaint except in this Convention. The great source of complaint among the people was in respect to the court of appeals, not but what it was a good court, not but what its decisions were good law, not but what its judges were upright and honest and competent men, but that it was incapable of disposing of the business before it.

Here the gavel fell, the gentleman's time having expired.

Mr. COMSTOCK—If the amendment of the gentleman from Ontario [Mr. McDonald] only involved the question of three departments of the State, or four, I might vote for it; but it presents a proposition which will prevent my sustaining it. If the amendment shall be voted down I will myself, if no one else does, present to the committee the single question whether the departments shall be three or four, so that may be voted upon by itself.

Mr. CHURCH—I offer the following amendment:

The SECRETARY read the amendment as follows:

After "departments" in the eleventh line, of section 6, page 5, insert as follows:

"At the first election of justices of the supreme court, no elector shall vote for more than six of the ten judges in the first department, and five of the eight justices in the other departments."

Mr. CHURCH—I do not intend to take up the time of the committee in any extended remarks upon this proposition. It will be seen that it presents the principle of having minorities represented in our courts, and I regard it as of very great importance. It is well known to every gentleman of this Convention that there has been great apprehension among the people that the elective State judiciary would in time degenerate the character of our courts. That apprehension is still felt very extensively among the people of this State. Large numbers of the people regard the system as of doubtful utility. But this Convention, by the action which they have already taken, and the expressions which they have already made upon this subject, are not disposed to change the elective system of the judiciary. I believe, sir, that this minority principle will remedy many, if not all the evils, which we apprehend may result to the system by a continuance of electing judges. I believe it will tend to elevate the courts of this State, and improve the character of the judges. It will inspire emulation in the different parties to present for the office of judge their very best and most capable men. And when they are elected it will induce on the part of the courts themselves a greater spirit of fairness and of independence in the discharge of their duties. And after a good deal of reflection upon this subject, I believe that no provision can be made which would tend to elevate the character of our courts so much as this minority principle in the amendment I propose to incorporate in this section, and for that reason I trust that the committee will adopt it.

Mr. EVARTS—I rise not for the purpose of debating, much less of opposing the proposition, but to suggest to the gentleman from Orleans [Mr. Church] and to the committee, that it would be quite as well that this subject should be considered in connection with another subject which will undoubtedly be brought to the notice of and pressed upon the attention of the Convention, as to the manner of filling the first bench, to wit: whether the judges now in office shall be retained until the expiration of their respective terms. Both these topics could properly be postponed until we reach the tenth section of our report, which provides for filling vacancies in the office of judge, and in connection with which the manner in which the first bench shall be filled can be taken up. I would rather go on with what concerns the frame-work of the court before taking up that question.

Mr. CHURCH—I have no objection to accepting the suggestion of the gentleman from New York [Mr. Evarts]. I would inquire of him whether he considers it consistent with the minority principle to continue the present judges in office?

Mr. EVARTS—It is not; but I would say that we should consider this question in connection with that other proposition which we know to be in the minds of many of the Convention. I would say this much, that I have a very strong inclination to support the plan of those who would fill the vacancies, if to be filled at all, by this method of representation of minorities, rather than by political conventions, although the Convention knows that I am wholly opposed to the general principle of a minority representation. I now, however, desire that we shall not be retarded and pushed aside in the tenor of our course in the framing of the courts by this question of the manner in which the first bench shall be filled.

Mr. CHURCH—I will withdraw the amendment for the present, at the suggestion of the gentleman from New York [Mr. Evarts].

Mr. COMSTOCK—I said I would move and I now move to strike out the last sentence of this section: "One-half of the justices in each department shall reside in each district of such department at the time of their election."

It is in the plan of the Committee on the Judiciary, and it is the main feature of their plan in organizing the supreme court to make the justices by departments, in four departments. It is also in their plan that the courts in banc, or as we call them, the general terms, shall exist and operate by departments to be organized with a chief justice of the department, with a

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power in the Legislature to provide for assigning associate judges in those courts of review. These are the two main features in the plan of the committee, and from the votes which have been taken in this body, I judge upon good grounds, I think that we are about to adopt the substantial features of that plan. That being so, I do not see the function of these districts. They seem to have no useful office or function in the plan of the Judiciary Committee. Certainly I do not intend to convey the idea that these appellate courts—the courts in banc within the supreme court—are not to be held at all convenient places in the State which may be appointed by the judges, or may be required by the Legislature, so as to suit the convenience of the bar and of the public. That can be done without districts. You do not want the organization of the State into districts for any such purpose as that. This part which I propose to strike out is wholly impracticable, and I think impossible in practice. You say by this that one-half of the justices of each department shall reside in each of the two districts of the department at the time of their election. Political parties will nominate their judges undoubtedly with reference to that clause of the Constitution if it be retained. They will nominate eight judges in a department, four being located by residence in each district; but it depends entirely upon the will of the electors where they shall reside at the time of their election; and when you come to count the votes you may find that five or even six of them who have the highest number of votes are residing in one of those two districts. I think this clause discharges no useful purpose in the plan and will be wholly impracticable to be carried out; and I therefore move to strike out that feature in the report.

Mr. BECKWITH—I trust that it will not be stricken out, and I will give the reasons why I think it should not. If the gentleman resided in my neighborhood and knew the inconvenience which those of the profession sustain in consequence of the location of the judges at a great distance from our places of business, I think he would not be in favor of it. Much of the business now done in the supreme court is done at special term, and the special terms are now held as often as twice a month by each judge at chambers, when not sitting at the circuit or in general term. A great proportion of this business is done in that way. It is very often necessary to obtain orders that cannot be obtained except from a supreme court judge. Take my district: suppose they should elect them all in the third district; then I should have, in order to obtain an order, to come to Albany or Troy to obtain a single order and to do my special term business.

Mr. COMSTOCK—Let me make a single suggestion. I think the profession and the people will take care of their own convenience in the election and location of their judges.

Mr. BECKWITH—I think they should be compelled to locate four in each judicial district, as the State is now divided, for the convenience of suitors and the profession. It would be the means of saving a great deal of expense to both the suitors and the profession to have them thus located. I have suffered this inconvenience myself. I have had a party come to me in a very important case to appear and put in a defense in a suit. He came to me within a day or two before the time to answer had expired. The county judge had been his counsel or was absent from the neighborhood, and I, being unable to reach a judge to obtain an extension of the time to answer, have been obliged to put in a formal answer, and then obtain leave to amend it. If we had these judges elected all in one particular locality, it would be doing the profession and the litigants a great injustice and cause great inconvenience and expense.

Mr. KINNEY—I would like to ask the gentleman the question, if he can secure that equal division of the judges in each district unless they are elected by districts? and if that can, by any possibility, be secured by electing by departments?

Mr. BECKWITH—It is provided they shall be elected by departments; but the report also provides that one-half shall come from each district; that is, four from each judicial district; and the majority have no right to elect them all from one district. Then it may result in an election by a plurality vote, as in the case where there are three tickets running for the same office. Four of those running in one district will be elected, and four of those residing in another will be elected, although they may not have a majority of all the votes. It should be so organized as to bring about this result; otherwise, you cause great inconvenience to suitors, and great expense to attorneys. This provision, I think, would force parties to select their best men. It is certainly very inconvenient for persons residing in districts remote from a judge to travel one hundred and fifty miles to obtain orders, which will be likely to happen if the judges are elected by departments and be not obliged to locate part of them in each district. I hope the clause will not be stricken out.

Mr. WAKEMAN—I would like to inquire why the electors in a district may not have the privilege of selecting among the entire candidates in the district. By the report of the committee we would not have that power, or if we have the power, the result would be, it would amount to nothing; for, although we can vote for eight candidates, we are obliged to vote for four in a particular locality. There is an impropriety—an incongruity in this. We must remember that this is the judiciary, and why not give the elector the privilege of selecting from the entire district the best men he can find on either side. The point we are trying to arrive at, is to give the people a chance to scrutinize as between candidates. If I find in a single district that one party has put up a man of unsuitable character by reason of any party machinery, and the other party has put up a fair, good man, although he does not happen to reside in my particular locality, I cannot have the privilege of voting for him. The result is that we would be confined almost absolutely and entirely to party nominations. Now, I do not desire it should be so. I want to compel parties, in the first place, to put up their very best men, and if, perchance, they fail to do so, to give the electors of the district the power to vote for any number of men they think proper up to the

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number of eight, whether they may reside in the particular locality or not. Then you place every judge before the electors and the scrutiny of the entire district. I hope, for these reasons, and others, that the amendment of the gentleman from Onondaga [Mr. Comstock] will prevail.

Mr. M. I. TOWNSEND—I hope the amendment of the gentleman from Onondaga [Mr. Comstock] will not prevail. I do not believe that the judiciary of the State should be established upon the principle that a tyro in a grocery thought he was to spell the word "coffee." He collected all the hard letters and combinations he could find and succeeded in spelling it "kauphy," [laughter] thus avoiding any letter contained in the original word. I do not believe that the judiciary will be any better for throwing burdens upon the profession and making it difficult to carry on the business of the law and to attend to the interests of suitors. Under the present system, in my own district, we have four judges. One of these judges is located at Troy, another at Albany, two more of them are located at Hudson. The judge at the city of Troy holds a perpetual special term. His special term accommodates not only the lawyers of the county of Rensselaer, but all the lawyers of that vicinity, for the transaction of all the business that shall properly be done at a special term. Another of the judges, Judge Peckham, resides at Albany, and although his special term is not perpetual, yet he is easily accessible at the city of Albany to those persons who wish to transact business. I want to know if there is any necessity for our adopting a system of things that will take all these judges, if a majority of the electors of the third and fourth districts so vote, and carry them to the fourth judicial district? Is there any public good to be obtained by it? Is there any benefit to be obtained in so modifying this proposition as to take these judges out of the district? Or suppose, on the contrary, that the two judges now residing at Hudson were removed to the fourth district; the people living in the lower part of this judicial district would be compelled to come over to Albany or Troy, or go farther and fare worse, before they could reach a judge to transact any special term business. It is but creating difficulty. It is but imposing burdens and labor upon the legal profession and expense upon the suitors. Now, certainly this feature, of all others, is one that ought not to be destroyed. If we get up to this enlarged plan, we might expect that the judge would be good enough, being elected by two districts, and yet the provision says that four judges shall reside in each of the districts of the departments that shall be made. It seems to me it is putting an unnecessary burden on the suitors, and therefore think we should not adopt it.

Mr. E. A. BROWN—I move to amend by striking out all after the words "by law," in the third line of section 6, and inserting—

The CHAIRMAN—An amendment, to be in order, must be germane to the motion now pending. There is a motion now pending from the gentleman from Onondaga [Mr. Comstock], and the amendment proposed is evidently not germane.

The question was put on the adoption of the amendment offered by Mr. Comstock, and it was declared lost.

Mr. E. A. BROWN—I move to strike out all of the sixth section after the words "by law," in the third line, and insert in place thereof section 4, of article 6, of the present Constitution, down to the word "population," near the close of it—as follows:

"The State shall be divided into eight judicial districts, of which the city of New York shall be one; the others to be bounded by county lines and to be compact and equal in population as nearly as may be. There shall be four justices of the supreme court in each district, and as many more in the district composed of the city of New York as may from time to time be authorized by law, but not to exceed in the whole such number, in proportion to its population, as shall be in conformity with the number of such judges in the residue of the State in proportion to its population."

I desire to say, in relation to the proposed amendment, that in my judgment, (and I believe that judgment is fortified by the experience of this State for all time), that half a million of people, and that the business of half a million of people in the judicial districts of the State outside of the city of the city of New York, affords business enough for four judges—affords a constituency large enough for the election of judges of the supreme court, and that it is not a public benefit to increase those districts by doubling them in population and business, and that we shall best subserve the public interest by continuing substantially the present system of the supreme court. And I do not believe that any of the evils, or any of the supposed evils, that may have existed, or may be supposed to exist, in the State of New York, are of sufficient importance to justify such a departure from the present system as is proposed. I think they are abundantly competent in this State, to take care of their own interests.

Mr. FOLGER—Is not that the same motion that was made by the gentleman from Steuben [Mr. Spencer]?

The CHAIRMAN—The Chair will ask the gentleman to point out wherein it differs from that of the gentleman from Steuben [Mr. Spencer].

Mr. E. A. BROWN—The amendment of the gentleman from Steuben [Mr. Spencer] seems to have provided for a continuance of the present justices in office.

Mr. SPENCER—That we are through now.

The CHAIRMAN—The Chair understands that the question was taken distinctly on every thing in the proposition of the gentleman from Steuben [Mr. Spencer] which is not in the amendment of the gentleman from Lewis [Mr. E. A. Brown].

Mr. SPENCER—It has been suggested to me by several of the members of the Convention that, either from want of attention or a want of understanding, the proposition, at the time the vote was taken upon my amendment, there was not a fair expression of the opinion of the committee upon it; and, if in order, I move to reconsider the vote by which my amendment was lost.

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The CHAIRMAN—The Chair will first dispose of the question which was raised.

Mr. E. A. BROWN—Does my friend from Steuben consider my amendment substantially the same as his?

Mr. SPENCER—I understand it to be.

The CHAIRMAN—The Chair holds the amendment of the gentleman from Lewis [Mr. E. A. Brown] to be out of order. The question is, therefore, on the motion to reconsider the vote whereby the amendment of the gentleman from Steuben [Mr. Spencer] was lost.

Mr. SPENCER—I ask to have the amendment read, and to have a count in taking the vote.

The SECRETARY read the amendment as follows:

Amend section 6 by striking out all after the word "law," in line three, and insert the following:

SEC. 6. The State shall be divided into eight judicial districts, of which the city of New York shall be one; the others to be bounded by county lines, and to be compact and equal in population, as nearly as may be. There shall be four justices of the supreme court in each district, and as many more in any district as may be authorized by law. The justices of the present supreme court shall be justices of the supreme court hereby established during the term for which they were respectively elected. Provision shall be made by law for the election of justices of the supreme court by the electors of the several judicial districts.

Mr. S. TOWNSEND—I would like to ask the gentleman from Steuben [Mr. Spencer] this question: Is not this amendment precisely the same as it now exists in the Constitution? If it is, why not state it so, and let us know what we are voting on?

Mr. YOUNG—I do not know whether it will be in order for me now to finish the remarks I had to make or not.

The CHAIRMAN—The gentleman from Ulster [Mr. Young] is in order upon the question now pending.

Mr. YOUNG—I was about to remark that I could not see any fault to find with the present system. My colleague [Mr. Cooke] gave as one reason that causes were frequently sworn off, because litigants thought that the judge who was about to hold the circuit was favorable to the attorney upon the other side, and that they would swear off the cause in order to bring it before another judge at another circuit. I would much prefer even this course of procedure to having litigants compelled to try a cause before a judge who had his pet lawyers in the county; and if the system recommended by some, of having a circuit judge to hold courts in two or more counties was adopted, I think that that judge would be more likely to have his pet lawyers in those two or three counties, than if he were compelled to hold his courts in seven, eight or nine different counties, as the districts are now divided, and not in any one county perhaps more than once in each year. The courts are now held throughout the State, so that it is very convenient, not only to the profession but to the people who are litigating, with special terms in every county. Judges are so located that it is convenient for almost every lawyer in the State to do chamber business, and so far as dispatch of business is concerned, I know of no general term in this State where the calendar is not gone through with regularly; and if an appeal is brought two months before the general term is held, it can almost invariably be disposed of at the general term. Of course I am opposed, and I presume every member of this committee is opposed, to having a judge sit in review of his own decisions. I have known that to be the case not only at general term but in the court of appeals. I have known causes to be tried at the circuit before a judge, with the same judge to sit in review of his own decision at the general term; and when the cause was to be heard at the court of appeals, the same judge was there advocating his own opinion on the bench. This, of course, is wrong, and it can be obviated by an amendment without materially altering the present system.

The CHAIRMAN stated the question to be on the motion of Mr. Spencer to reconsider.

Mr. GRAVES—I desire to ask the gentleman from Steuben [Mr. Spencer] how far his amendment differs from the present mode organizing that court?

Mr. SPENCER—The amendment differs in this: that it authorizes the Legislature to provide an additional judge in any district, while the present Constitution only authorizes it in the first district. If the vote shall be reconsidered I propose, in accordance with a suggestion that has been made, to accept an amendment making the provision strictly as it is in the present Constitution, and confine that increase to the first district alone.

The question was put on the motion of Mr. Spencer to reconsider, and, on a division, it was found that no quorum had voted, there being 35 ayes, 38 noes.

The CHAIRMAN—The Chair is of opinion that there is no quorum in the house. The vote will be taken again, and gentlemen present will please vote.

The question was again put upon the motion to reconsider and it was declared lost, by a vote of 45 to 48.

Mr. E. A. BROWN—The amendment that I offered, on hearing the amendment of Mr. Spencer read, seems to be different. The distinction was pointed out by the gentleman from Steuben [Mr. Spencer]. The amendments are not identical.

The CHAIRMAN—The gentleman from Lewis [Mr. E. A Brown] offers the amendment previously offered by him. It is precisely the provision of the present Constitution.

The question was put on the amendment offered by Mr. E. A. Brown, and, on a division, it was declared lost, ayes 21, noes not counted.

Mr. BAKER—I move to insert in the fifth line, after the word "departments," the words "having an equal population as near as may be."

Mr. COOKE—I would suggest that the gentleman also put in the words "composed of contiguous territory."

Mr. BAKER—I accept of that. If it is in or-

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der, I will propose a further amendment: to strike out, in the fourteenth line, after the word "department," the words, "at the time of their election." If there is any propriety in requiring a judge to reside in the district at the time of his election, there is a propriety in his being in the district after his election.

The question was put on the first proposition of the amendment offered by Mr. Baker, and it was declared lost.

The CHAIRMAN then stated the question to be upon the second proposition of the amendment offered by Mr. Baker, to strike out the words "at the time of their election."

Mr. M. I. TOWNSEND—I think that if the provision contained in that clause of this section be left as it would stand after the striking out of these words, it would probably lead to this result, that the judges might be elected from any portion of the district, and that the clause in reference to half of them should reside in each district would be merely directory. It would be directory to eight judges. There would be no designation as to which of the eight should reside in the district, and that, in a word, the result which the gentleman from Montgomery [Mr. Baker] desires, and in which I concur with him, could not be accomplished. I propose, as a substitute for his amendment, to add to the section these words: "and during their term of office." My friend from Montgomery [Mr. Baker], I understand, accepts it.

Mr. BAKER—I accept of that.

Mr. FOLGER—I think that this amendment had better be postponed until the amendment which is designed to be offered by the gentleman from Orleans [Mr. Church] is voted upon; because, if the minority of the electors are to have the right to choose certain of the judges, it might complicate all this question.

Mr. M. I. TOWNSEND—I think that no difficulty can arise in that way. Electors, when they meet for the purpose of making their nominations, will be admonished that this result must occur, and they must make their nominations accordingly.

Mr. FOLGER—Take the sixth and seventh districts. Nominations are to be made by parties; no doubt about that. One party meets and nominates four in the sixth and four in the seventh. Another party meets and nominates four in the sixth and four in the seventh. Now comes in the provision that the minority shall elect some of them. Who is to have the highest vote of the minority? Who knows whether it will elect six out of the eight in the seventh district, or six out of the eight in the sixth district? Then your provision that they shall reside "at the time of their election" will be inoperative. Therefore I think it had better be postponed until that question is disposed of, then we can frame something to meet the views of the gentleman from Montgomery [Mr. Baker].

Mr. BECKWITH—The sixth section does not provide that the judges of the supreme court shall be elected at all. The second section provides that the judges of the court of appeals shall be elected. This section does not provide that they shall be elected by departments or otherwise. It does not necessarily follow that they are to be elected by departments. They may still be elected by districts, all of them.

Mr. FOLGER—I would state that the sixteenth section does provide that they shall be elected by departments. I move that this amendment be postponed for the present.

The question was put on the motion of Mr. Folger, and it was declared carried.

Mr. GRAVES—I would like to know what condition the section is now in, so far as relates to amendments.

The CHAIRMAN—The Chair will state that it is in its original condition, as reported by the committee.

Mr. YOUNG—I move to amend by striking out the word "four," in the fifth line of the eighth section, and inserting "eight;" also striking out the word "and" in the fifth line, the whole of the sixth line, and the seventh line to the word "lines."

Mr. FOLGER—I rise to a point of order. That is substantially the amendment of the gentleman from Steuben [Mr. Spencer], which has already been disposed of.

The CHAIRMAN—The Chair must hold the point of order well taken.

Mr. BAKER—If it is in order, I desire to propose the following substitute for the sixth section:

The SECRETARY read the substitute as follows:

SEC. —. There shall be a supreme court vested with general, original and appellate jurisdiction in law and equity, subject to such appellate jurisdiction of the court of appeals as may be prescribed by law. Said supreme court shall consist of a chief justice, to be elected by the electors of the State at large, who shall hold his office for the term of twelve years, and of the justices to be elected in each of the eight judicial districts hereinafter mentioned. The Legislature, as soon as practicable after the adoption of this Constitution, shall divide the State into eight judicial districts, of which the city of New York shall be one, and each of the other seven districts to be bounded by county lines, and to be composed of contiguous and compact territory, having an equal population as near as may be. There shall be four justices of said court elected in each of said eight districts by the electors therein, and as many more in the district composed of the city of New York as may from time to time be authorized by law, but not to exceed in the whole such number, in proportion to its population, as shall be in conformity with the number of such judges in the residue of the State in proportion to its population. The justices first to be so elected in such districts shall be classified so that one of the justices of each district shall go out of office at the end of every three years, and after the expiration of their terms under such classification, the term of their office shall be twelve years. The chief justice of said court and the justice in each of said districts having the shortest time to serve, shall constitute the court to hold the general terms thereof, at such times and places as may be designated by law. The justices of said court other than those required to hold the general terms thereof shall be the justices for holding the circuit courts, special

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...s of the supreme court, and to preside in the ...rts of oyer and terminer, to be held in the ...al counties of this State. Provided said ...f justice or any of the justices of said court ...ll attain the age of seventy-five years before ...e end of his term, he shall cease to hold his ...ice longer than the first day of January next ...er he shall so arrive at the age of seventy-five ...rs.

Mr. BAKER—The plan proposed by me is consistent with the views that I have expressed on this floor from the beginning—that we ought to have but one supreme court, and at the same time preserves another principle insisted upon by many delegates in the Convention, that the judges holding the general terms should also be familiar with the circuit and special term business and practice; providing that the judge who has the shortest term to serve shall constitute a part of the supreme court, with a chief judge to be elected by the electors at large, and all the other judges to be elected by the electors of the several districts, as now elected. I am aware that this proposition will not receive much support in this Convention, but I propose it now in committee, for the purpose of calling the ayes and noes upon it when we come into Convention at the proper time. As I remarked last night, I believe we shall all see the time when we shall regret having divided up or consented the division of the supreme court. Now, in answer to the gentleman from Ontario [Mr. Folger], who referred to some remarks made by me last evening. He assumes in his argument in favor of continuing a divided court, that the business will remain in the future as it has been in the past—will remain in amount and quantity the same. My theory is that by reconstituting and reorganizing a supreme court which will promulgate a consistent and uniform law, it will diminish the amount of business that will go before that court, and it is with that view that I propose this amendment. I believe that the Legislature can provide for the court holding its terms in the several counties and localities in this State to accommodate the legal profession and the business of the State. There is hardly a county in the State now, in which people cannot travel by railroad. It is very different now from what it was twenty years ago when the Constitution of 1846 was adopted, when it was difficult getting about the State. The facilities for traveling have increased, and it is just as convenient now for the profession in the fourth district to attend a general term in Albany as it is in Schenectady or Saratoga. There is no difficulty about lawyers in any county of the State going to any other county, and the court may bring the business home to the different parts of the State by holding their terms in the different parts of the State to accommodate the profession and the business, so that the system of having but one court will not re-establish that monopoly of the business which has been so much deprecated by the delegates in this Convention, and which led to the overthrow of the old system in the adoption of the Constitution of 1846.

The question was put on the amendment offered by Mr. Baker, and it was declared lost.

The SECRETARY then proceeded to read section 8, as follows:

SEC. 8. Provision shall be made by law for designating from time to time the justices who shall hold the general terms, and also for designating from their number a chief justice of each department, who shall act as such during his continuance in office. Four of the said judges shall be designated to hold the general term, and three thereof shall form a quorum. And any one or more of said judges may hold special terms, and circuit courts, and any one of them may preside in courts of oyer and terminer in any county.

Mr. SMITH—I move to amend by adding:

"But no justice of said court, except the chief justice, shall sit at general term in the district in which he has been elected."

The purpose of this amendment will be seen at a glance. It provides that no judge, except the chief justice, shall sit at general term in the district in which he was elected. The design of it is to organize a general term in such a way that the judges cannot by any possibility sit in review of their own decisions, nor in any way influence those decisions. This whole subject has been sufficiently ventilated, and I will not, therefore, occupy any time in the discussion of it, but I trust that the amendment will be received favorably by the friends of the majority report, because it is not, in any way, as I understand it, hostile to that report.

Mr. EVARTS—The object of this amendment, as stated by the mover of it, is one which has, as he says, been discussed, but it is difficult for one to see how the method that he proposes accomplishes that object, and it certainly sacrifices some most important considerations. His provision requires that the general term in every district should always be held by foreign judges, as I understand it. That is so, is it not?

Mr. SMITH—That would be the result of the amendment, substantially.

Mr. EVARTS—Always to be held by foreign judges?

Mr. SMITH—With the exception of the chief justice.

Mr. EVARTS—That requires, to begin with, that all the judges should go from their homes and cross the line of their respective districts. That is a very great evil and a very great inconvenience. Then he refers to them as justices in the districts in which they have been elected. They are elected by a department. It is only as a place of residence that the district plays any part in this system.

Mr. SMITH—The language ought to be "departments," if it is not. The intention was to exclude them from sitting at general term in the department in which they were elected, and not the districts.

Mr. EVARTS—That shifts them, then, all from one department into another, whenever there is to be a general term. That is still more of a migration. That disposes perhaps of a criticism that I was about to make while it stood "districts;" and that is, unless the amendment proceeded to provide that no judge should hold a special term or a circuit except in the district where he resides,

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it would not secure this object of different judges for review from the judges of original jurisdiction, because these judges within the department certainly may, and are expected to hold circuits and special terms in either district within their department as convenience may dictate; and it is within the competency of the system, and is so intended to be, that judges shall be capable of holding circuits and special terms all over the State as the convenience of the public may require; so that it is difficult to see how this provision does secure the object at which it aims. If it did secure it in a fuller degree than the report of the committee accomplishes it, it would only do so at a sacrifice which I am sure the profession, the judiciary and the community, would never be ready to submit to, that is, requiring all general terms to be held, at all times, by judges foreign to the district, or the department in which they sit.

Mr. SMITH—Can I make further remark?

The CHAIRMAN—By unanimous consent.

Mr. SMITH—I am exceedingly anxious that this majority report should be made acceptable; but it has seemed to me from the first that there was a failure in the organization of the general term. I do not see that it provides at all, substantially, against the difficulty of which so much complaint has been made. Judges are not effectually excluded from sitting in review of their own decisions; the organization of the general term is left to the Legislature, and for aught we know that body will never make such provisions as are needed. The clause or provision which says that no judge shall sit in review of his own decision, as was very clearly shown by the gentleman from Ulster [Mr. Cooke], the other day, in his remarks, is a delusion. It amounts to very little. These men sit at general term; a cause comes up, and one of the judges says to his brethren, "I tried this case below; I cannot sit," and he stands aside. Another cause comes up, and another judge says, "I tried this case below: I cannot sit," and he stands aside. They may or may not listen to the argument; and when the judges come together for consultation, as was truly said, they may use their influence in sustaining the decisions which they made in the court below, and yet not have the benefit of the arguments which were addressed to the court in favor of reversing those decisions. This would be worse than the present system. I do not see that there is any great hardship in requiring a judge to go into a different department. Under the proposed amendment, the general term would be composed of judges drawn from other departments; and under this arrangement there could be no possibility of judges sitting in review of their own decisions. Why, then, object to it? The committee may insist upon pressing their scheme through in all its details, thrusting it down people's throats whether they will or no; but it seems to me, that is not the best mode of arriving at a conclusion that will command the approbation and support of the people. I trust, therefore, that in these matters of detail that are not in antagonism to the general features of the plan presented by the committee, they will consent that modification may be made; because this is not the end of the matter. We have got to present this Constitution to the people, and meet the practical difficulties that exist. Difficulties do exist, and will be felt when our work is submitted to the people; and although I may not possess the ability of the learned gentleman from New York [Mr. Evarts], I am capable of understanding what the people in the country say, and what they think; and I do not deem it either wise or prudent to disregard public sentiment.

Mr. M. I. TOWNSEND—I think, Mr. Chairman, that we may carry our suspicions in regard to the judiciary of the State to an undue extent. The suspicion is pretty general that human nature, working in the minds of our judges, will render them strongly prejudiced at general term in favor of the conclusion which they have formed at the special term or at the circuit. I do not think that it is a well-grounded suspicion, in the minds either of members of this Convention or in the minds of the people of the State at large, that judges, acting under the solemnity of their oaths, lobby through their own opinions to any extent in this State; or, if a single judge should be found willing to thus step out of the line of his duty in office, I do not believe that the suspicion generally prevails that the three judges who sit and hear and decide the cause, upon the solemnity of their oaths (and upon what is equally binding upon them, the desire to keep the integrity of their own character before the State, which is the strongest motive almost that can operate upon the human mind), will suffer themselves to have that decision lobbied through: I do not believe there is that feeling; I do not believe that there is any necessity of creating differences in our judicial system to meet that part of the case. I often occurs, as judges have been previously lawyers in the case that comes before the court, that the judge finds himself, at the general term, incompetent to sit in consequence of having been consulted upon one side or the other. Did the suspicion ever enter the mind of any gentleman that a judge who had been counsel in a case before he came upon the bench lobbied with judges who heard the argument to carry through the cause in which he had been engaged as counsel and in which he originally had the feeling of a counsel, and in regard to which, undoubtedly, that feeling has not yet left him? It seems to me that we are carrying this notion of suspicion too far, and that we may prejudice the judiciary, prejudice public opinion, and prejudice the interest of the State, if we carry it further than there is reasonable ground to carry it. If there is reasonable ground, I certainly would vote for any proposition which would prevent it. It seems to me that we should not consider that the judiciary of this State, selected carefully and bound by the most solemn oath and the most solemn responsibility to do their duty will be influenced by one who has made a decision in that case, to vary the conclusion which they would otherwise come to in the consideration or disposition of the question at the general term.

The question was put on the adoption of the amendment offered by Mr. Smith, and it was declared lost.

Mr. HALE—I move to amend by striking out all after the word "office," in the fifth line, and the whole of the sixth line, except the last word

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and inserting instead these words: "four justices in each department shall be designated to hold general terms. Three of them shall form a quorum, and the justices so designated may sit at general term in any district except as the Legislature may otherwise provide." My object in presenting this amendment is this: as the section reads now, I think it is doubtful whether these four justices (the word should be "justices" in all cases, but in this section by mistake the word "judges" is retained) designated to hold the general term would not be confined to their own department; whether the Legislature would have any power to provide for the interchanging of the justices among the departments. Now, if we are to have this system, as this committee seems to have determined, I think we should make it as flexible as is compatible with the preservation of the system, and give the Legislature power to provide that these judges may sit in different parts of the State, and also power to hold a State term if it shall be deemed best. Perhaps it might not be wise to require this in the Constitution, but it might be tried as an experiment by a legislative act, which could be repealed if found to work badly.

The question was put on the amendment of Mr. Hale, and it was declared carried.

Mr. COOKE—I propose to amend the section by striking out all after the word "quorum" or rather all after the amendment just adopted. It is unnecessary to make that provision in this Constitution. The Legislature have full power to organize courts under the provision as it will stand without this clause. Again this clause may operate inconveniently. It may be that the Legislature will think it advisable to designate the judges either within the department or without the department who shall hold the circuit court. It may be necessary to give the Legislature power in order to carry out the spirit of the ninth section to control the whole matter of the holding of circuits and special terms, so as to prevent what the Convention is attempting to prevent, the sitting of a judge in review of his own decisions. As I understand this clause that I ask to have stricken out, it forbids the Legislature any power to provide for a case of this kind. It authorizes any judge to go anywhere in any county in the State to hold circuit without any reference to whether it will naturally, in the ordinary course of business, make him a member of a court that is to pass upon an appeal from his own decisions or not. I think it is better to leave it in the power of the Legislature to make provisions to remedy any such evil as was apprehended by the Convention when they adopted section 9.

Mr. FOLGER—I would merely state that that is a provision of the present Constitution copied directly from it, and I do not see any objection to it.

Mr. EVARTS—I take it that, although the object proposed by the gentleman from Ulster [Mr. Cooke] is all very well, yet the office of this clause of the section is to guard against any construction or conclusion that the justices in any one department were shut up to judicial duty within that department. I suppose that is the whole object of this clause. As the gentleman says, the Legislature arranges all these things; and this is merely to give competency to every justice, notwithstanding the division into departments, to serve as a justice of the supreme court in all parts of the State, and the regulations on this subject to be made by the Legislature. It is so now, and I suppose that that was the true object of this clause. Without this it might be argued that we had provided for judges in these departments that have no function outside of them.

Mr. ANDREWS—I am rather inclined to favor the amendment of the gentleman from Ulster [Mr. Cooke] for this reason. When we say by the Constitution that any judge may hold special terms and circuits anywhere in the State, I am afraid that we exclude the Legislature from the power to say that for a certain definite period the services of any judge shall be confined to the duties of the judge at general term or to the duties of the judge at circuit; preferring to leave this whole section to the control of the Legislature, so that the departments may be organized as shall be by them thought best. I am disposed, therefore, to favor the amendment.

Mr. EVARTS—If the gentleman from Ulster [Mr. Cooke] will allow me, I will make a suggestion: that the points made out on both sides may be met by a modification of the clause in this wise, "and it shall be competent for any one or more of said judges to hold special terms and circuits, and to preside in courts of oyer and terminer in any county, as the Legislature may by law direct."

The question was put on the amendment of Mr. Cooke, and it was declared lost.

Mr. HALE—I would suggest that the gentleman from New York [Mr. Evarts] should move as an amendment the modification which he has just read.

Mr. EVARTS—I am willing to move that amendment.

Mr. COOKE—I would like to know whether the amendment of the gentleman from New York [Mr. Evarts] proposes to strike out this clause?

Mr. EVARTS—Yes, sir.

Mr. COOKE—Then the amendment will serve the purpose I have in view.

Mr. COMSTOCK—It seems to me that this whole subject is covered by the seventh section already adopted, to wit: that "the Legislature shall have the same power to alter and regulate the jurisdictions and proceedings in law and equity, as they have heretofore possessed."

Mr. COOKE—The gentleman from New York [Mr. Evarts] has suggested that the principle objection to striking out the clause altogether was that it might leave the Legislature to construe this section as confining the judges to their own departments. I had an idea that it would be better to simply say in this place instead of the language proposed to be stricken out "that nothing contained herein shall be construed to prevent any justice from holding court in any county of the State." I do not see any use in this provision, because it is not necessary to give the justices power to hold the court. They have that power without any constitutional and legislative provision, and therefore, I think, it would

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be better to strike out the clause, because that will abbreviate the section and the object will be answered without it.

Mr. COMSTOCK—I suppose the gentleman's purpose in that clause is to prescribe the function of the judge. The clause is copied from the old Constitution, and I am very well satisfied that it cannot be improved.

Mr. RATHBUN—I am in favor of the amendment of the gentleman from New York [Mr. Evarts], and I hope it will prevail. These four judges may have, and, I have no doubt, will have a good deal of time upon their hands which will not be occupied in judicial labor. They will be able undoubtedly to devote a part of the time to the trial of causes and the holding of special terms. Now, adopt the amendment of the gentleman from New York [Mr. Evarts], and they may be assigned by the Legislature to districts in which their services are needed, and they may aid in those departments where there is not sufficient force otherwise, to enable the business of the departments to be kept up promptly, and in holding courts of oyer and terminer. That duty will not interfere at all with their holding general terms in their own department, free from the objection that they are to pass upon decisions of their own, and it seems to me that it is perfectly proper to enable the Legislature to occupy the whole time of these judges, if necessary, in other departments, where their aid is needed, to keep up the business, and yet yield to the prevailing feeling that they ought not to review their own decisions. Upon this ground I am in favor of the amendment, and I think it is as near as this Convention can possibly come to the proper arrangement in this respect.

The question was put on the motion of Mr. Evarts, and it was declared carried.

There being no further amendment offered, the SECRETARY read section 10.

Mr. COMSTOCK—A substitute for section 10 has already been adopted, and located as section 5 of this report. I now propose a section 10 to provide for vacancies in the supreme court.

The SECRETARY read the section proposed by Mr. Comstock, as follows:

SEC. 10. When a vacancy shall occur in the office of justice of the supreme court three months prior to a general election, the same shall be filled at such election, and until any vacancy can be so filled, the Governor, by the advice and consent of the Senate, if the Senate shall be in session, or, if not in session, the Governor alone may appoint to fill such vacancy. Any such appointment shall continue until the first day of January next after the election, at which the vacancy can be filled.

Mr. BICKFORD—I hope that will be amended by substituting "two" before the word "months" in place of "three." I move that amendment.

Mr. E. A. BROWN—I would ask what length of time is provided for in section 5?

Mr. COMSTOCK — The same time — three months.

The question was put on the amendment of Mr. Bickford, and it was declared lost.

The question recurred on the amendment of Mr. Comstock, and it was declared carried.

There being no further amendment offere
the SECRETARY read the eleventh section
follows:

SEC. 11. At the general election in the ye
1870, there shall be submitted to the people,
such manner as the Legislature shall provide
law, to be determined by the electors of t
State, the question: "Shall vacancies as the
occur in the office of the judges and justic
mentioned in sections 2, 6, and 15 of article V
of the Constitution be filled by appointment?
And if the majority of all the electors voting
such election shall vote that such vacancies sha
be so filled, then thereafter all vacancies in th
office of judge of the court of appeals, justice o
the supreme court, judges of the superior court o
the city of New York, and of the court of commo
pleas for the city and county of New Yor
and of the superior court of the city of Buffal
shall be filled by the Governor, by and with th
advice and consent of the Senate; or if the Sena
is not in session, by the Governor, but in suc
case the term of office shall expire at the end o
the session of the Senate next after such appoin
ment.

Mr. ANDREWS—I move to strike out "1870
in the first line, and substitute therefor "1873.

The question was put on the motion of M
Andrews.

Mr. COMSTOCK—I demand a count.

Before the vote was announced—

Mr. HALE—If it is in order I would like t
ask my friend from Onondaga [Mr. Andrews
what is the object of the postponement unt
1873.

Mr. ANDREWS—Why, it is very clear tha
this Constitution is not to be adopted at as earl
a day as was supposed when this report wa
made, and if it shall not be adopted so as to tak
effect before the first day of January, 1869,
will leave the State without any experience o
the working of the system that we shall subst
tute for the present one; and in my judgmen
there should be time given so that from such ex
perience the people of the State may be able t
determine the question as to the best method o
securing the selection of judges.

Mr. HALE—I would ask whether the post
ponement for one year, until the year 187
would not cover all the delay that is required b
the delay in the submission of the Constitutio
to the people.

Mr. ANDREWS—I do not think it should b
less than I have stated.

Mr. COMSTOCK—I am sure that the people o
the State have had their experience under th
elective system. I do not say now whether
has been a fortunate or an unfortunate experienc
I express no opinion upon that point, but fo
twenty years past we have lived under the elec
tive judiciary system, and I think if we make
provision to take the sense of the people on thi
question at all at a general election, the sooner i
can be done, the better. It may be that 1870 i
a little too soon, for the Constitution may not b
adopted at as early a day as was anticipated whe
that year was mentioned. If the gentlema
would say 1871 or 1872 I would be glad to co
cur with him in his amendment.

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Mr. EVARTS—1872 is presidential election year.

Mr. ANDREWS—I will accept the suggestion to make it 1872.

Mr COMSTOCK—1871 would be at least a year after the adoption of the Constitution, and at least a year after this judiciary system was in full force and operation. I will move, if it is in order, that the time be 1871.

The CHAIRMAN—The Chair cannot entertain a motion for another amendment where the question has already been put on the motion of the gentleman from Onondaga [Mr. Andrews], and it only remains to announce the vote.

The amendment of Mr. Andrews was declared carried.

Mr. FOLGER—I move to amend in the seventh line by inserting after the word "vote" the words "on such question," so as to avoid the difference of opinion that has occurred in another case, owing to the same phraseology.

The question was put on the motion of Mr. Folger, and it was declared carried.

Mr. E. BROOKS—In order that a quorum may vote upon the time named in the first line of this section, and that we may have the sense of the committee—because I think the amendment moved by the gentleman from Onondaga [Mr. Andrews] is an eminently proper one—I move to reconsider the vote substituting 1873 for 1870.

The question was put on the motion of Mr. E. Brooks, to reconsider, and it was declared lost.

Mr. TAPPEN—I move to strike out the word "appointment," in the sixth line, and insert the word "election," so that the electors of that time, the affirmative generally having the majority, may determine that the vacancies shall thereafter be filled by election.

Mr. FOLGER—If I remember rightly, the course of debate in this Convention, the gentleman from Westchester [Mr. Tappen] has asserted that, on one question which is to be submitted to the people, the affirmative will not have the majority; and it is quite certain that three or four times when that question has been put to the people, the affirmative has not had the majority. I do not see that it follows that a question is to be answered always in the affirmative. Some gentlemen have had the experience of having negative answers given to their question. I hope the amendment will not be adopted.

Mr. EVARTS—It will be seen that this would be rather an impertinent question to put to the people, because the Constitution, as they will have passed it, provides for filling these places by election, and the mere negative answer of the people that they do not want them filled by election would not indicate how they did desire them filled. This is putting to them the direct question: You have an elective system for your judiciary; do you now prefer that these judges should be appointed?

The question was put on the amendment of Mr. Tappen, and it was declared lost.

Mr. E. A. BROWN—I move to strike out the section entirely. This seems to me a very unusual provision to put into a Constitution which is to provide for a judiciary elected by the people. We provide for an elective judiciary, and then provide that three years after the Constitution goes into effect the voters shall say whether they will elect their judges or not. The Constitution itself, when framed and perfected, will undoubtedly contain a provision for its own amendment; and if experience shall demonstrate that an amendment in this particular is desirable or necessary it can be made in the usual way, and I do not see any necessity for our providing for the expense or trouble of this election, unless there should be some call on the part of the people at that time for such an amendment of the Constitution.

Mr. S. TOWNSEND—I hope the motion of the gentleman from Lewis [Mr. E. A. Brown] will prevail. I do not want to see a question of this importance submitted to the people at an ordinary general election. Let it take the form of an amendment to the Constitution, as the gentleman from Lewis [Mr. E. A. Brown] has suggested, if the people wish to make such an amendment.

Mr. COOKE—It seems to me a little singular that it should be proposed to submit the matter to the people in this form. It amounts simply to a separate submission of the question of appointing judges. Now this Convention have already, so far as they could do it in Committee of the Whole, adopted a provision for filling these vacancies by election. In our wisdom we have come to the conclusion that that is the true way of choosing these officers and filling these vacancies, and I think that when we have arrived at that conclusion we have done all that we have any business to do in the matter. We might arrange it so as to submit the question in some way as to the propriety of filling the vacancies by appointment, but it is a little out of order and out of character, it seems to me, to do that after we have once determined that it is wise to choose the judges and fill the vacancies by election. As I have just said, it only amounts to a separate submission of a question that we have once decided. I think it would be more harmonious, more symmetrical, to strike out the section altogether and submit the Constitution without it.

Mr. RATHBUN—My opinion has been, from the first, that the best way to select the judges would be by appointment. There are others upon this floor who agree with me in regard to that—quite a number—but we have been voted down on that question, and it has been decided by the Convention that the judges shall all be elected at the outset. Now, I regard this section as, in some measure, a concession to those members of the Convention who entertain an opinion on this subject contrary to that of the majority of the Convention; that, while by the provision contained in the article which we submit, that all of the judges shall be elected in the outset, yet the question shall be afterward submitted to the people for them to decide for themselves whether the vacancies occurring in the judicial offices, when we are fairly under way under the new system, shall be supplied by election or by appointment. The proposition is to submit the question distinctly to the people. It is a plain, simple proposition, and I would certainly like to hear the people's answer upon that subject. I think gentlemen are mistaken when they say that the people are very

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tenacious about holding on to the principle of the election of the judges, and I want to see this question submitted to the people within a reasonable time, and then we shall see who is right about it.

Mr. COOKE—Have we any right to submit to the people, in the Constitution, any provisions that we do not adopt here? Is it not our business to submit to the people what we adopt and not what we reject?

Mr. RATHBUN—The answer to that is that, we have adopted a proposition in the Constitution which is now settled. I suppose that all the judges, in the outset, shall be elected by the people. Now, the question is, have we a right to submit, through the Legislature, at some future time, another question, namely, shall the selection of the judges be retained in the hands of the people or shall the vacancies be filled by appointment? If the gentleman wants to know whether I think it is right to submit that question, I say yes, I do think it is right, and, therefore, I am in favor of it. I desire that the people should pass upon that question distinctly, directly and alone, and let them decide it as they have a right to do. It is the people's business, whether they prefer to retain the principle of election to fill vacancies or whether they prefer that the power to fill vacancies should be exercised by the Governor, by and with the advice and consent of the Senate.

Mr. M. I. TOWNSEND—I hope that this section will be stricken out. I am entirely opposed to the whole system of making the law partners, or the sons-in-law of the Executive of the State, the judges of the State; the appointing system, whether it be applied to the judges or to any other officers, is simply taking away from the people of the State the selection of their own servants, and putting it into the hands of whoever may have the central chair at that time and leaving it to him to appoint his friends and proteges, whoever they may be. I am utterly opposed to the section, and I hope it will be stricken out.

Mr. FOLGER—I believe that no gentleman on the floor of this Convention has uttered more words during the time that we have been in session in favor of disposing of every question and deciding every thing in accordance with the will of the people, than the gentleman who has just taken his seat [Mr. M. I. Townsend]; but now I understand that he wants to set up his will against the will of the people, if their will differs from his. This is not a question of whether the Executive shall appoint to the office of judge his friend or his son-in-law, but it is a question whether the people shall be permitted to decide for themselves what is the best system of filling the vacancies which may occur in the judicial office. This section proposes to go to the people and to ask them this question and to get their answer: "Do you wish to have your judiciary an appointive judiciary?" The very will of the people is to be reached. Yet there stands the advocate of the people, who is in favor of submitting every thing to the people and of being in all respects governed by their opinion, their will, and their wish, and yet it seems he will set up his "I" against them and their wish, if they do not agree with him.

Mr. M. I. TOWNSEND—I am proud of the compliment which the gentleman from Ontario [Mr. Folger] has just paid me. I do not propose at this late day in the session of the Convention, to take any part in trying to find some device or indirection by which the people can be cheated out of their will in this matter.

Mr. YOUNG—I have observed that where offices are filled by appointment, the appointees are generally those old political hacks who have been disappointed in being elected by the people, and who are consoled and rewarded by appointments from the Governor. Now, I think that when the people pass their condemnation upon a man he should be silent. I am opposed to the Governor's taking him up and setting him on his feet again over the will of the people, and therefore I am opposed to every proposition of this kind.

Mr. RATHBUN—I would like to inquire of the gentleman whether he is so much opposed to appointment of judges by the Governor that he is not willing to let the people decide for themselves whether such appointments should be made?

The question was put upon the motion of Mr. E. A. Brown, to strike out the section, and, on a division, it was declared lost by a vote of 42 to 43.

Mr. SPENCER—I move a reconsidertion of the vote by which the motion to strike out has just been defeated.

The question was then put on the motion of Mr. Spencer to reconsider, and it was declared lost by a vote of 40 to 47.

Mr. KRUM—Is an amendment to the eleventh section in order?

The CHAIRMAN—It is.

Mr. KRUM—I move to strike out the word "and" in the fifth line between the figures 6 and 15, and to insert after the word "15," "and 18," so that the section will then read "shall vacancies as they occur in the office of the judges and justices mentioned in sections 2, 6, 15 and 18 be filled by appointment?" My object is that this section shall also include the office of county judge, and if it shall be deemed best by the people to elect their judges, for the reason that by so doing they get better judges, I presume that the same rule that applies to the judges of the court of appeals and justices of the supreme court, will apply to county judges. I think there are better reasons why county judges should be appointed than why judges of the court of appeals and justices of the supreme court should be appointed. If any influence is exercised upon the mind of the judge, by reason of his being elected, it most assuredly acts upon the county judge more certainly than it does upon any other. I move to include county judges with the rest.

The question was put on the motion of Mr. Krum, and it was declared carried.

Mr. WALES—I move to include district attorneys.

Mr. BAKER—I move to include justices of the peace. It seems to me that if there is any class of judicial officers liable to be biased by local influences, it is the justices of the peace; and if we want to remove our judicial officers beyond the

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reach of that bias which may be supposed to result from their being elective, it seems to me that the rule can be applied to justices of the peace with peculiar propriety. The judge of the court of appeals is not liable to be influenced by the excitements of any particular locality or neighborhood. It is only upon great political questions that that court is at all liable to be influenced improperly; whereas, our local magistrates are very liable to be influenced by local questions and excitements. I therefore hope that, if it is the intention to submit this question to the people, of how the higher judicial offices shall be filled, they will also submit the question whether the Executive of the State shall not have the power to appoint all magistrates. It seems to me that it is full as important to the people, to place their popular judicial officers beyond the possibility of being biased by local influences, as it is to protect the higher courts and judges from being biased improperly; and if this question is to be submitted to the people at all, I move an amendment to this effect.

Mr. COMSTOCK—I do not think it wise to include too much in this proposition, because if we do so, it will defeat its own object. I have regarded this provision, brought forward by the Judicary Committee, as one of the wisest in the Constitution. Now, it may be very true that the people will vote that the judges of their high courts shall be appointive instead of elective, when they may not be prepared to confirm the same propositon in regard to the district attorneys or to justices of the peace. I therefore think that these officers had better not be grouped in this proposition, but that the people should be allowed to give their vote substantially upon this single question.

Mr. WALES—I withdraw my amendment.

The question was put on the motion of Mr. Baker, and it was declared lost.

The hour of two o'clock having arrived, the PRESIDENT resumed the chair, and the Convention took a recess until seven o'clock this evening.

EVENING SESSION.

The Convention re-assembled at seven o'clock, again resolved itself into a Committee of the Whole and resumed the consideration of the report of the Committee on the Judiciary, Mr. C. C. DWIGHT, of Cayuga, in the chair.

The CHAIRMAN announced the pending question to be on the adoption of section 11.

Mr. COOKE—I want to suggest to the gentleman from Schoharie [Mr. Krum] that, in order to make his amendment effectual, he should insert the word "county" after "Buffalo."

Mr. KRUM—The amendment is proper, I think, in order to give to the section the effect I intended.

The question was put on the amendment of Mr. Cooke, and it was declared carried.

There being no further amendments, the SECRETARY read the thirteenth section as follows:

SEC. 13. The times and places of holding the terms of the court of appeals and of the general and special terms of the supreme court within the several departments and districts, and the circuit courts and courts of oyer and terminer within the several counties, shall be provided for by law. But provision shall be made for holding general terms of the supreme court at convenient places in each of said districts.

Mr. COMSTOCK—I move to strike out, in the last line, the words "convenient places," so that it will read, "but provision shall be made for holding general terms of the supreme court in each of said districts." I will explain to the committee the reason of my amendment. The section, as it now reads, is certainly open to the construction that there must be more than one place of holding the general term. It reads "the times and places" in each of the districts. Now, in nearly all the judicial districts of the State the general terms are held in but one place. That is the case, I know, in the third district. It is so in the fifth district. I am not sure about the sixth; but in the seventh and in the eighth districts that is also the case. I simply wish to leave it in such shape that it will not be imperative to hold those terms at more than one place in a particular district.

The question was put on the amendment of Mr. Comstock, and it was declared carried.

There being no further amendments, the SECRETARY read the fifteenth section as follows:

SEC. 15. There shall be in the city and county of New York, the superior court of the city of New York, and the court of common pleas of said city and county. And there shall be in the city of Buffalo the superior court of said city. The said courts shall severally have the jurisdiction they now severally possess, and such other original and appellate civil and criminal jurisdiction as may be conferred by law. There shall be five judges of the superior court of the city and county of New York; five judges of the court of common pleas of the said city and county of New York; and three judges of the superior court of the city of Buffalo. The judges of said courts respectively shall designate one of their number as chief justice, who shall act as such as long as he continues in office. Vacancies in said court shall be filled by election by the electors of said cities respectively, at the general election next after the vacancy shall occur, and until such general election in the same manner as vacancies in the office of justice of the supreme court, as is hereinbefore provided.

Mr. COOKE—I have an amendment I propose to offer. Strike out all after the words "there shall be," in the first line, and insert as follows: "such courts of limited jurisdiction in cities as the Legislature shall prescribe." I offer this amendment with a view to hearing gentlemen who have examined that question express their views upon it. I know that it is the opinion of quite a number of the members of this Convention that these courts ought not to be constitutionalized in this way. It is for the purpose of getting at the views of the different delegates that I offer this amendment.

Mr. COMSTOCK—These courts certainly have not the same terrritorial jurisdiction as the supreme court. But in the territory for which they are constituted their jurisdiction is not, and I ap-

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prehend ought not, to be limited. I do not know exactly the idea which the gentleman from Ulster [Mr. Cooke] attaches to the word limited or limitations in his amendment. These are courts of very great importance in that populous and commercial city. And I apprehend that whatever reason we have for fixing our supreme court permanently on the foundation of the Constitution, the same reasons apply, and with equal force, to the courts in the city of New York. They are courts as important to the people of that city as any of the courts in this State are to the people of the State. They have as large a jurisdiction within their territorial limits as the courts of the State. And we all know that the controversies that are brought into those courts and determined by them are generally, in amount and importance, much greater than those which occur in the courts of original and general jurisdiction throughout the State. I cannot think of any good reason, and I have heard none suggested on this floor, although there may be such, why those courts should not receive a recognition in the Constitution of the State. Of course by constitutionalizing the courts we do not by any means constitutionalize the judges who sit in the courts. We do not recognize persons, we simply recognize the constitution of these courts. I wait to hear some reason why it should not be done.

Mr. COOKE—Heretofore the Legislature has been left free to organize such courts for cities as they deemed best in view of the necessities that existed. There has been, up to this time, no provision in the Constitution organizing any of those courts. And I am not aware that the public interests have suffered from the omissions of the Constitution of 1846, or any prior Constitution in this respect. I had rather hoped to hear some good reason for inserting this provision in the Constitution now. If this matter is left to the Legislature and the courts prove inadequate, any omission can be supplied. They can be created, enlarged and made more comprehensive, and better enabled to transact their business. The rule we act upon in most of these matters is, unless we want to restrain the Legislature in some way, to leave them free to organize courts or do other legislative business in a way which shall seem to them best. Is it important, is it necessary for this Convention to restrain the Legislature in respect to the organization of any courts in the city and county of New York? The gentleman [Mr. Comstock] wants to know what is meant by limited jurisdiction. I mean by it, in this amendment, a jurisdiction that is limited territorially to the cities. It may be necessary to limit them in regard to the subject-matter of the controversy. When one or both of the parties are required to reside in the city to give the court jurisdiction, I believe it is perfectly proper to describe it as a court of limited jurisdiction.

The question was put on the amendment of Mr. Cooke, and it was declared lost.

Mr. COMSTOCK—I move so to amend the section so that the number of judges of the superior court and the court of common pleas shall be six instead of five. I am told that there are reasons of importance why the number should be six instead of five.

Mr. SPENCER—I offer the following substitut by way of amendment; inserting after the wor Buffalo, in line eleven, the following: "the num ber of judges of either of said courts may be i creased as the Legislature shall by law direct.

Mr. COMSTOCK — Does the gentleman offe that as an amendment to my amendment or t the section?

Mr. SPENCER — As an amendment to th amendment of the gentleman from Onondaga [M Comstock].

Mr. COMSTOCK — I think the amendmen would be very useful, although I think the one offered should be adopted also. I offered m amendment for the reason that the court shoul not be reduced by this Constitution. The proposition is to reduce the number of the court but no good reason has yet been given for it tha I know of, and very good reasons exist wh it should not be done.

Mr. SPENCER—If the gentleman will allo me; I suppose that the section provided for th Constitution of those courts as they now exis I will withdraw my amendment for the presen

Mr. KRUM—I would like to inquire of th gentleman from New York [Mr. Garvin] ho many judges are now in the court of commo pleas.

Mr. GARVIN—There are three.

Mr. KRUM—Does the gentleman propose t increase the number to six.

Mr. GARVIN—This section makes the numbe five; but for the purpose of making the cour effective I propose to the gentleman from Onon daga that he increase the number to six.

Mr. ROBERTSON—Some doubts have been ex pressed as to the propriety of having courts in troduced into the Constitution which are not part of the general system, as it is termed, for th administration of justice in the State. It woul be improper undoubtedly to have any thing intro duced but a uniform administration of justic throughout the State, were it not that we hav in two extremes of the State, in two localities a dense population having interests in the com merce of the State, in such manner as to hav numerous and important controversies arise ou of the common transactions of life, for th disposition of which three local courts hav been established. These three institutions hav been tried and their success has been the result of experience. They have stood the test of time two of them for more than twenty years, and th last for a considerable number of years past, an they have all of them met with the approbation o the portions of the State in which they have ad ministered justice. It will be difficult to conceive therefore, why we should not include in th judicial system of the State these three tenders t the great judicial machines by which justice i administered in the way in which it has been pro posed by the committee. The expense of main taining these additional and subordinate branche of the judiciary system is to be borne by the in habitants of the localities for whose benefit the are created. If we provide that the judiciary forc of the State of New York shall consist only of uniform system of supreme court judges, ther would necessarily be a tax upon the State for th

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salary of those judges, and the other parts of the machinery connected with the working of that system. It would be a relief to the city and county of New York and the city of Buffalo to have these additional courts, and their support would inflict no burden upon the rest of the people of the State. As these courts are now constituted, their salaries and expenses are borne by those persons who particularly feel the benefit. Whereas, the judiciary system in regard to the administration of justice by this great State court, the supreme court, is borne by the State at large. Thus *pro tanto* the State of New York is relieved from the burden of supporting that out-branch of the judiciary system for the administration of justice, in the city of New York, by the two courts of that city, and the citizens of the county of Erie, by the superior court of the city of Buffalo. We, therefore, take from the residue of the State a burden of a peculiar character. I therefore maintain that, in regard to the cases disposed of by those courts, the rest of the people of the State ought to be perfectly willing and anxious that these institutions should be sustained, because it relieves them from the burden, and because the people who are to be benefited by them, and for whom they are peculiarly created, are those who best understand what costs should be borne for the purpose of maintaining them. In regard to the number of judges, I am satisfied that six is the most beneficial number we can possibly adopt for the purpose of carrying on the business. We then have the smallest odd number of judges, three, for a general term, and revising any mistake that may be made in decisions by single judges. We have two judges engaged in the trial of cases. We have another judge engaged in carrying on that branch of the administration of justice which consists of motions at chambers, equity cases, and other business pertaining to special terms. In that way, the whole machinery is moving, in clearing off the calendar of those cases which relate only to the business of the city of New York. I therefore would humbly suggest, unless the committee find some cogent reason for continuing the number five as reported by the Judiciary Committee, that the number should be six in both courts, subject to a change by an addition to the number by the Legislature, if hereafter the multiplicity of business should require an increase of judges; and the flexibility should be provided for this section which is proposed by the gentleman from Steuben [Mr. Spencer].

Mr. S. TOWNSEND—I would like to inquire of the gentleman from New York what proportion of the business of the superior court arises purely from the commercial transactions of the city, and whether or not a considerable portion of the business does not properly belong to other counties of the State?

Mr. ROBERTSON—The jurisdiction of the superior court of the city of New York and of the common pleas also, refers entirely to cases in which the defendants are residents of the city and county of New York, or may be served with process therein. By far the greatest part of the business is that which relates to transactions either between parties residing in the city and county of New York, or suits by residents there from whom goods may have been purchased, or with whom commercial contracts have been made by parties residing elsewhere, but who are found in the city and upon whom processes may be served there. Very rarely do any cases come into those courts which grow out of transactions in other portions of the State.

Mr. FOLGER—What is the condition of the calendar in those courts?

Mr. ROBERTSON—Document 33, which is the report of the clerk of the superior court, in answer to a resolution of this body asking for information in regard to that matter, reports the number of cases on the calendar in 1866. The whole number of the cases on the calendar on January 1st, 1866, at general term, was forty The number of cases during the whole year, three hundred and eleven; the number of appeals argued, one hundred and forty-six. I may add that at every general term in that court the whole calendar is called, and all the cases could be heard if the counsel were not engaged in cases elsewhere which prevent their being ready to argue. In January, 1866, the number of cases on the special term calendar was thirty-nine; motions heard and decided at chambers in that month were three hundred and forty-seven. We may take this as a specimen. Every one of these cases were called on that calendar. The recapitulation gives the number of motions heard and decided at 3,808; the number of cases on the calendar 392, and the number of cases tried at special term 102. In the trial terms the whole number of cases on the calendar, January 1st, 1866, was 2,351. The number of cases are all specified as well as the number of cases tried and the number of cases added to the calendar during that year. So also the naturalization business at times occupies greatly the attention of all the judges of the court. The number of naturalizations for 1866 was 5,501.

Mr. S. TOWNSEND—I regret there is no one of the representatives from the city of New York on the floor to raise the question that I am about to. That is, why should the city of New York be compelled to support and contribute to the entire expenses of the judiciary of her own city and county, as well as that of other counties of the State? I see it stated that the expenses of the jurisprudence of the city of New York, chargeable upon the county taxation, amount to about half a million of dollars per year. As a matter of principle, I submit that all the litigation, with the exception perhaps of the peculiar class that has been mentioned by my honorable friend, should be charged equally to the State at large. I think there is an anomaly here. In the first place, the creating of the two courts, with powers co-equal to that of the supreme court, is an exception to our general system. There are some twenty odd representatives from that city who ought to be here to prevent this apparent injustice to the tax payers, or at least the county of New York, and I feel some diffidence in pressing these views. But it seems to me that here is a marked anomaly, and the question presents itself to my mind, whether we should constitutionalize it. I think not

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Mr. C. E. PARKER—I would like to inquire from some gentleman who has experience whether there is any necessity for doubling the present number of judges in the common pleas court. I understand there are but three now. I have but very little experience myself in the matter. I would like to inquire what the necessity is.

Mr. DALY—I suppose whatever reasons justify the present number of judges of the superior court, justify also the same number for the court of common pleas. The reasons are plain. The court of common pleas, from the limited number of its judges, is the most heavily worked court in the city of New York. Its present force is quite inadequate to its labors. Its ordinary business is as great as that of the superior court, and it is, in addition, the appellate court of all the inferior tribunals in the city. I am constrained to say this, although one of the judges of the court, that there is, perhaps, no tribunal in this State, the labor of which, in proportion to its numerical force, is as great as the court of common pleas. The business of both these courts is very heavy, and I can only say in reply to the gentleman from Tioga [Mr. C. E. Parker], whatever number is necessary to carry on the buiness of the superior court is equally required in the court of common pleas.

Mr. PIERREPONT—I believe it will be found to be the universal sentiment of every lawyer of the city of New York, that it is very desirable to increase the number of judges in the court of common pleas. I do not know that there is any difference in the opinion of lawyers upon this question.

Mr. SMITH—I do not think that those who live in the country should complain of an increase of the judicial force in the city of New York. The supreme court judges are supplied by the State and paid out of the State treasury; but of course they are wholly unable to perform the large amount of business in the city of New York. If that city needs a larger judicial force, and the people there are willing to pay for it, certainly those who live in the country ought not to complain. I take this occasion to speak of the reports of the superior court and the court of common pleas of the city of New York, inasmuch as on two or three occasions I have commented with some degree of severity upon the character of our supreme court reports. I regard the reports of the superior court and of the court of common pleas of the city of New York, as very valuable, and as indispensable to a lawyer who desires to keep himself thoroughly posted upon the law. The reports of the common pleas are especially valuable to lawyers in the country, because they embrace a class of cases that are of frequent occurrence in the country. I refer to appeals from justices' courts. I wish to say this, because I would not do injustice to the reports of any court in the State.

Mr. COOKE—I would like to inquire of the gentleman from Fulton [Mr. Smith], where he finds any distinction between the supreme court and these local courts with respect to their being paid by the State? If I understand section 17, it puts them all on the same footing—the State has to pay the salaries of those judges; the superior court and the court of common pleas, as well as of the supreme court.

Mr. FOLGER—I would like to ask the gentleman from Ulster [Mr. Cooke] where he finds in section 17 any thing requiring the State treasury to pay them? The bare fact of putting these courts in the Constitution does not make them a State expense, any more than putting a county court into the Constitution.

Mr. COOKE—I was alluding to the distinction made by the gentleman from Fulton [Mr. Smith] I take it that the provision in section 17 guarantees to these judges their salaries, and I presume they would have to be paid by the State.

Mr. SMITH—I named the distinction upon the authority of the gentleman from New York [Mr. Robertson]. I supposed that the distinction existed, and believe still that it does, although I am not, at the moment, aware of the provision of law upon which the gentleman based his statement. He will be able to explain it doubtless.

Mr. COMSTOCK—I am quite sure it is not the construction of section 17, that these courts shall be paid out of the treasury of the State. It merely requires that they shall have a compensation to be fixed by law, not that that compensation shall be paid by the State. Those courts are now paid by the State.

Mr. DALY—Under the existing organization of those courts, in the special act which exists, there is a provision that compensation shall be fixed by law. That compensation is fixed by the board of supervisors in the city of New York. The courts have never been a charge upon the State from the time of their organization to the present day. There is nothing in the Constitution which makes them a charge upon the State.

Mr. HALE—I would suggest that if there is any doubt as to the effect of this section 17, a very slight modification would remove the doubt, inasmuch as all gentlemen are quite agreed that those courts should be supported by the city of New York. I suppose there will be no objection to such a modification.

Mr. BECKWITH—If gentlemen will look at the provisions of this report, they will find that in the next section provision is made for a county court. It provides that the supervisors shall furnish means to pay for their services. It leaves, therefore, the superior court and the court of common pleas, of the city of New York, on the same footing as the supreme court. It provides that they shall be paid, without saying who shall pay them. When it comes to the county court it provides that the supervisors shall pay the salaries of these judges. So, it seems to me, to raise the question and answer it, that they are to be paid by the State, excepting the county courts, for which provision is to be made by the board of supervisors.

Mr. DALY—It is a very easy matter, as has been suggested by the gentleman from Essex [Mr Hale], to remove our difficulty by amendment But I see no occasion for it. There is an existing statute which declares how they shall be paid. This statute is not abolished by this provision of the Constitution. It still remains in force.

Mr. COOKE—I would like to inquire of the

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gentleman from New York [Mr. Daly], whether he thinks that be so? Here the Constitution for the first time provides, that there shall be certain constitutional courts, in the city of New York, a superior court and common pleas, and the superior court of Buffalo, and that the Legislature shall fix the pay of the judges. Now, is there not danger of a different construction; that this provision may be considered as abrogating that statute, or is it not a fact, that the Legislature could repeal that act?

Mr. DALY—I will suggest that the gentleman from Essex [Mr. Hale] is probably preparing an amendment which will remove all difficulty.

Mr. ROBERTSON—I suppose there will be no difficulty until we come to section 17. There is no provision for the payment of any thing to any of the judges of the State. It is a matter entirely of convenience or expediency on the part of the Legislature, whether they choose to pay any salary to the justices of the supreme court or not. The probability is no one would be willing to enter on those onerous duties without the payment of some compensation. Therefore it is not until we come to section 17 that we can at all fix by whom these salaries are to be paid. I can see no difficulty in providing for their compensation to be fixed by law, and this will solve all the difficulty.

The question was put on the amendment of Mr. Comstock, and it was declared carried.

Mr. EVARTS—I beg leave to offer this amendment to come in at the close of section 15 as it now reads:

The SECRETARY read the amendment as follows:

Add to section 15: "It shall be competent for the Legislature to provide by law for the detailing of one or more judges of the superior court or of the court of common pleas of the city of New York to hold circuits or special terms of the supreme court in the city and county of New York from time to time, as the exigencies of judicial business in that city and county may require."

Mr. EVARTS—This matter was talked of somewhat in the Judiciary Committee, and we discussed what was familiar to us and familiar to the gentlemen of the profession in the Convention, the habit which prevailed in England, and which has been found very useful when an accumulation of business should arise in any circuit, by authorizing, by special commission from the crown, a barrister to discharge particular functions, for a limited period, for the relief of that particular circuit. Now, we all appreciate the expected growth of the city of New York, in its population and in its wealth, in its business and in its litigation, and it should have as much provision for the accommodation of its business as is possible under our Constitution. It has occurred to me that this amendment which I propose, without adding in the least to the permanent judicial force of the State, or of the city, or of the county, or to the expenses of the same, might be such as would be found practically useful, and thus the public would be benefited without injury or marring of the judicial machinery of the State. I have conferred with various members of the Judiciary Committee, and with the justices of these two courts who have seats in this Convention, and I do not find that any objection presents itself to their minds. I therefore propose the amendment, and conceive that no harm can arise from its adoption.

The question was put on the amendment of Mr. Evarts, and it was declared carried.

Mr. HALE—I move to amend the section by adding thereto the following:

The SECRETARY read the amendment as follows:

The judges of the courts mentioned in this section shall be paid, and the expenses of said courts defrayed in the manner now provided by law.

Mr. EVARTS—Why is it necessary to confine the power of the Legislature to the methods now provided by law?

Mr. BECKWITH—I would suggest to the gentleman, that he insert his amendment after the words "county judge."

Mr. HALE—I think we would remove all difficulty by striking out the word "now," and leaving it to the Legislature. It is more convenient to put the amendment here because all these courts are mentioned in this section, and it will not be necessary to repeat their names.

The question was put on the amendment of Mr. Hale, and it was declared carried.

There being no further amendment, the SECRETARY read the sixteenth section as follows:

SEC. 16. Justices of the supreme court shall be elected by the electors of their respective departments: judges of the superior court of the city and county of New York, and the court of common pleas of the city and county of New York, by the electors of that city and county; and judges of the superior court of the city of Buffalo, by the electors of that city. The said justices and judges shall hold their offices during good behavior until they respectively attain the age of seventy years.

Mr. CHURCH—I offer the following amendment, to come in after the word "city" in the sixth line of the sixteenth section.

The SECRETARY read the amendment as follows:

"At the first election of justices of the supreme court under this Constitution no elector shall vote for more than six justices in the department in which ten are to be elected, nor more than five in a department in which eight justices are to be elected, and at the first election of judges of the superior court of the city of New York, and of the court of common pleas of the said city and county of New York, no elector shall vote for more than four of said judges, and at the first election of judges of the superior court of the city of Buffalo, no elector shall vote for more than two of said judges."

Mr. SPENCER—I offer the following by way of substitute.

The SECRETARY read the substitute as follows:

"The justices and judges of the present supreme and superior courts and courts of common pleas shall be justices and judges of the said courts hereby established during the terms for which they were respectively elected."

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The question was put on the amendment of Mr. Spencer, and, on a division, it was declared lost by a vote of 40 to 40.

The question recurred on the amendment of Mr. Church.

Mr. RATHBUN—I wish to ask the gentleman from Orleans [Mr. Church], whether he provides for the election of the judges of the superior court and the court of common pleas of New York as for the other courts?

Mr. CHURCH—My amendment provides for the same manner of election, so far as the minority principle is concerned.

Mr. RATHBUN—That is what I mean.

Mr. ALVORD—I would ask the gentleman from New York, and the other members of this committee, in the light of the result of the election in that city last year and the year before, there being no minority body to be represented, even by this system, whether the turkey is not all on one side? [Laughter.] It gives those gentlemen who represent the dominant party in that portion of the State the power of electing the whole of the judges, under this system, of their own special kind and character, and it compels us in the country to elect their men. Now, outside of this plan, I am opposed to just exactly what has happened in this case. I am opposed to the principle as utterly inconsistent with our democratic form of government, that a minority should have a right to select any of those men. The majority in all cases should speak in these matters. It would be undertaking to say: You shall elect six men and only vote for four—which is, in my opinion, a mistake of terms; it is no election. It permits the minority of the people to say that they will have such as they please for their judges, although they may be obnoxious to the majority of the people in other respects, in reference to their political character. I hope, therefore, that we shall stop now, and that we shall take back what we have done, so far as this report is concerned, in reference to the election of the judges of the court of appeals.

Mr. YOUNG—I think the gentleman's [Mr. Alvord's] party gets a very large slice of the turkey in the division of the State into four judicial departments. It is perfectly evident that the first and second judicial districts, as they are now constituted, must be the first department. That the third district which is and has been for a long time democratic, must be united with the fourth district to make the second department, which will make a republican department, and the result will be that there will be one democratic department in the State and three republican departments. And I think if there is any fault to be found about this division of the spoils between the parties in the State, we justly have occasion to make our share of the complaints. I was in favor of the minority representation recommended here, but the party in the majority has defeated the plan and taken from us one judicial district.

Mr. KRUM—I have been in favor of the representation of minorities, and upon the floor of this Convention voted in favor of representing minorities in the Legislature. In that I was overruled by the vote of the maiority of the delegates of this Convention. I would be in favor of the representation of minorities in the election of judges, but I desire such a representation of minorities as shall truly represent minorities and not majorities. Let us look at this question. The city of New York has six judges of the superior court, six judges of the court of common pleas, and ten judges of the supreme court, making twenty-two, and the city of Buffalo has three judges of the superior court—in all twenty-five—more than half of the judges of the State of New York. In addition to that, by this minority principle, they propose to take one-third of all the other judges of the State of New York. Now, I submit that such a represention of minorities is merely a representation in name and not a representation in fact. Therefore I agree with the gentleman from Onondaga [Mr. Alvord] and hope that this amendment will be voted down and also that we shall return and correct the same principle established with reference to the court of appeals.

Mr. EVARTS—I am not disposed to be wholly inattentive to the considerations of political fairness or of political calculation that may present themselves upon the arrangements that we are making in this regard. The gentleman from Schoharie [Mr. Krum] was a little wrong in his arithmetic in putting down ten judges for the supreme court in the city of New York. There are but five. There are ten in the department, which includes the second district as well as the first. But in regard to the present condition of the suffrage of the city and county of New York, referred to by the gentleman from Onondaga [Mr. Alvord], it can hardly be regarded as a permanent condition of the suffrage. [Laughter.] Whenever the party now there so much in the minority loses still further its hold upon the suffrage, then the party which will then include, substantially, all the votes of that city must divide itself on some new issues of politics. It is impossible that one party, the republican party, should remain in the condition that it now is; it must either increase or diminish, and either way this disparity will be removed. But we certainly must see all these judgeships in the hands of this political majority upon the ordinary method of election. We lose nothing, therefore, in that respect there. We, the minority, I have no doubt, will get on the bench there under this arrangement, four judges of our own party; but if we do not we shall at least hold a most important power as a minority in choosing between the different candidates of the same party that will be presented to the suffrage of the people. And if we cannot obtain judges, as we should be glad to do, that would represent us as the minority in politics, we may yet exercise an important and useful control in the public interests in the selection of candidates from the two tickets of the other party. But I think it will be found that the present condition of the politics of the State, even as they are the subject of calculation in parties as they now exist, is as favorable as any other to adopt what is a good and useful method if it be a good and useful method, for nobody can tell exactly how it will play its part in any coming election. I think we all agree, that

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re are on the eve of new arrangements of politics; that the divisions as they now exist, are too much traditionary and historical, upon the great issues that have really been settled before the people, and that new matters of political division are to arise in this State, as in all the other States of the Union. Now, having thus got rid of the political considerations, which do not much disturb me, I am only anxious to know whether the method itself is a wise one. I am wholly opposed to minority representation in political offices. I have throughout, in this Convention opposed any attempt to introduce the power of the minority in political bodies. It is not proposed by this amendment that the method of minority representation in the suffrage for judges shall be permanently fixed on our system. We are now to adopt a method whereby the judicial force of the State is, at once, to be filled anew, to the number of some forty or fifty judges, including the court of appeals, the courts of the cities, and the supreme court. In two particulars it is very undesirable that these courts should not be filled from one political party. First, in respect to the confidence in the bench thus to be constituted, in regard to political feeling and the attitude of the people toward them. And second, it is very desirable that when so great a number of judges are to be selected, the choice should not be limited to the bar of one party, that is half the bar of the State, but that its selection should include all fit men in the bar of both parties—the profession of the whole State. That being so, there is no better method—there is no better chance of an equal distribution through the bar of the State, so far as may be, of these judicial offices, than that which is proposed by this amendment of the gentleman from Orleans [Mr. Church]. By the disparity between the two classes to be voted for, making one so much larger than the other, and thus making the majority, the master, and the competition between the parties a serious and not a formal one, we secure all that proper activity of the two parties to put in nomination their best men in competition with the other party, and at the same time give the assurance that the entire new bench is not to be made up, exclusively, of any particular party, nor the selection confined to one-half the bar of the State.

Mr. COMSTOCK—I have never made any partisan allusion upon the floor of this Convention, and I never intended to do so. But the argument in opposition to the amendment of the gentleman from Orleans [Mr. Church], the argument made by my colleague from Onondaga [Mr. Alvord], is placed in a partisan aspect; and as I am very anxious that this amendment should prevail, and as I know that those who are opposed to me in party politics have a majority on this floor, I feel myself excused from alluding to the subject, for a moment, in the aspect in which it is put. One of the political parties of the State at this present moment seems to be numerically largely in the ascendent. I do not pretend to say how long that will last, but such seems to be the fact at the moment we are discussing this question. In answer to the argument of my colleague from Onondaga [Mr. Alvord] may I not say that a party in that condition should not be charged with selfishness, with an interested motive, with a want of magnanimity, when it concedes the minority principle in the choice of judges. Let us look at it a little further. In the arrangement of these departments in the supreme court, looking at the present political condition of the State, it is entirely certain that two of them will belong to one of the parties and two of them to the other. In a partisan election, therefore, if the question related only to the election of judges of the supreme court by departments, it is difficult to perceive which of the parties would gain and which of the parties would lose. Let us look still a little further. There are three important local courts involved in the proposition—the superior court of the city of New York, the court of common pleas of the city of New York, and the superior court of the city of Buffalo. Those courts are all to be elected by constituencies in which the party to which I have referred has a commanding majority. I, therefore, call the attention of the gentleman [Mr. Alvord] again, and of this committee again, to the fact that the party in the majority again concedes the minority principle. I submit, then, that, if the argument he put in this aspect before the Convention be right, my colleague [Mr. Alvord], ought to withdraw his opposition to this amendment. It is said, however, that political majorities in a certain portion of the State—I refer to the city of New York—are so intensified that the minority principle cannot have a practical operation. I differ in regard to that proposition, and I confess that one of my anxieties to have this amendment prevail is to see some of the minority of the bar in that very city, some of the eminent men belonging to that minority—men who adorn the bar, and who have a reputation commensurate with this whole nation, placed upon the bench in that city. I am anxious to see that done, and I believe it ought to be done. It is not to be conceived that a party which has even two to one could arrange its vote with such mathematical precision that it would defeat the operation of this principle. I think that the judicial elections will be controlled by the intelligence, the virtue and the good sense of that city. If my calculation in this regard is wrong, there is still the fact that the gentleman from New York [Mr. Evarts] has alluded to, that the minority may so control the selection of judges by the majority as to see to it that the best men are placed on the bench. I say it is entirely inconceivable that there shall be but one ticket for judges in the city of New York; and even if a political majority in that city can control, it will have at least two, and probably more than two tickets, and the power of the minority will be felt in those elections. It was to be expected when this principle was brought forward, it would encounter sectional opposition—encounter an opposition in one quarter of the State where one party is largely in the ascendent, and in another part of the State where another party is largely in the ascendent. But if it shall encounter opposition of that kind, I say, let us go to the people of the State with this principle, and appeal to their virtue and their intelligence to do what is right.

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Mr. ALVORD—I would say in answer to my colleague [Mr. Comstock] so far as regards the first part of his remarks, unless I am very much mistaken in the signs of the times, the majority which apparently was had in this State a few days since is fast passing away, and will become, I trust and believe, a beautiful minority before another election rolls round. But, in reference to this question, it seems to be wise upon the part of this Convention, if they really desire that their work here shall be effective and adopted by the people, to look at the matter in a broader view than simply our own ideas. For this is a question most certainly in which there is no very great amount of principle on either side, and therefore those who are in favor of this proposition can look upon it as I look upon it, as a question of expediency. We go down to the city of New York where there is an overwhelming political majority on the one side and offer them this proposition. If they have the least idea that they are going to lose political power in consequence of the fact that you have given the minority a chance to elect some of the judges, they will vote solid against your Constitution. Go into other portions of the State where the opposite is the truth—where the majority is very largely in the ascendancy upon the other side—and they will look at it simply in the idea of ascendency, so far as regards its political aspect, and they will say they will not give up, at the dictation of this Convention, a political power which resides in their hands to elect all their officers. So if you choose to put that in your Constitution and make it a dead weight, a millstone around its neck, simply for the purpose of carrying out an idea in which there is no principle, go on and do it.

Mr. SPENCER—At the best this is but a new and untried experiment that is proposed by the gentleman from Orleans [Mr. Church]. We have already adopted it in regard to the court of appeals, and it seems to me that this will be sufficient, and that it will be time to try it in regard to the other officers which are to be elected, either in localities or in the State, when that shall be found to have operated satisfactory. But I have another objection which is that the necessary result will be to constitutionalize out of office the present judges of the supreme court and of the several local courts. I move now, if it is in order, to reconsider the vote by which the amendment offered by me, by way of substitute to the amendment of the gentleman from Orleans [Mr. Church] was lost.

Mr. HALE—I trust the gentleman from Steuben [Mr. Spencer] will postpone the motion to reconsider until after the vote is taken upon this question, for the reason that if we do not adopt this system, I apprehend a good many who are in favor of it will vote for the proposition of the gentleman from Steuben [Mr. Spencer]. If we are to go back, in substance, to the old plan of electing judges, I presume that many of the gentlemen upon this floor in favor of the minority principle will prefer to vote for the proposition of the gentleman from Steuben [Mr. Spencer], who would not be prepared to vote for it now. I do not propose to say much upon this question. I reside in a district and department in which the political party to which I belong is in a large majority. I, nevertheless, am in favor of the amendment proposed by the gentleman from Orleans [Mr. Church]. And I am in favor of it, not upon political grounds. I think the great evil of this elective system—the great evil of the judiciary at the present day in this State is, that we consider it upon political rather than personal grounds. I regret to see, in this Convention, gentlemen get up here, and on a question like this, which involves the selection of judges, in which, regard should be paid, I was about to say exclusively—perhaps that would be too strong, but mainly, to the personal qualifications and character of the judges—attach so much weight to political considerations. I do not believe that it is necessary for me, or for any gentleman here, as a party man, to oppose or to approve of any system that is proposed here, according as he may think it will give to his party more or less of the judges. In my view of the matter, the question for us to consider is, how can we get the best court. Will the system that is proposed by the gentleman from Orleans [Mr. Church] give us a better court than to elect in the ordinary way, by which the majority elect the whole bench? But if we are to regard party considerations I would say that as I compute the number of judges that will be gained by each party, leaving out the court of appeals as a matter entirely in doubt, it will be precisely equal under this system. I do not believe but that if the republicans of the city of New York will nominate such men as they ought to nominate there, they will, under this system, always secure a representation in the local courts of that city. They will also elect one judge in the superior court of the city of Buffalo. You will find, therefore, if this plan of electing by departments prevails, laying out of view the court of appeals, by this system the republicans will gain nine judges and the democrats will gain nine judges. But the proper question for us is, will this system tend to secure better men as judges? I am very strongly of the opinion that it will. We know that in the history of the city of New York men have sometimes been nominated by the dominant party there for high judicial stations who were not believed by the community to be eminently fitted for that station. Whether that was mere prejudice, or whether the public opinion against the men nominated was well founded, I do not propose to discuss. But nominations of that kind have been made, and whenever this has occurred the majority by which they have been elected has been so much reduced as to make it apparent that under a system like this those men must have been defeated. If they had been put upon a ticket with other judges—upon a ticket where it was possible by this rule to defeat one or more of the number—you would find that those men who were objectionable to the bar of New York, and who were not believed for some reason to be fit for the stations for which they were nominated, would have been defeated; and I refer gentlemen to the record of the votes as proof of what I assert. The result will be this, that no party which believes itself to be in the majority will dare to nominate for judicial station men who are known to the

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profession to be unfit for it, or who are not believed by the profession to be proper candidates. The result will be, and it seems to me it is the only result that will save us from great harm under this elective system, that each party will always nominate its best men. Now, in a department where either party is in a large majority, it is of very little use for men in different localities who may know that the candidate is not a worthy one, to oppose his nomination and support a separate ticket. Even if the minority nominate unfit men under the proposed system, if the respectable, the responsible men of the party will nominate an independent candidate, the chances are that the independent candidates will get more votes than the regulars, and that they will come in second best and be the successful minority candidates. The objection that was raised when the principle of minority representations was urged in legislative assemblies, if it applies here, is an argument in favor of this system. The objection was this: It was said that the principle of minority representation would tend to break up parties. Now, I am free to say that, upon the election of judges, I desire above all things that parties should be broken up. I desire that men who belong to my party, if the opposite party nominates a better man for the office of judge than my party does, shall support him — that they shall not be bound by party ties. I believe that is a rule which ought to be impressed upon the electors of this State by every lawyer, and by every man who desires to see a pure and good judiciary, that a judicial election is not a party question. It is a question of men. And I shall support this plan because I believe it will, above all other plans, secure the putting into judicial stations of men who are fitted for such stations.

Mr. SPENCER—I should have been inclined to adopt the suggestion of the gentleman from Essex [Mr. Hale], but for the consideration that whatever disposition may be made of the amendment of the gentleman from Orleans [Mr. Church] the reconsideration of the vote on the amendment proposed by me would be improper or inapplicable. In case the amendment of the gentleman from Orleans [Mr. Church] should be adopted, it would be inconsistent with that proposed by me; and in case it should be rejected, there would be nothing for which my proposition would be a substitute.

Mr. WAKEMAN—Is the question now on reconsideration?

The CHAIRMAN—It is.

Mr. WAKEMAN—Is that in order while the other is pending?

The CHAIRMAN—It is.

Mr. WAKEMAN—I desired to say a few words on the other proposition.

Mr. A. J. PARKER—I hope that the gentleman from Steuben [Mr. Spencer] will himself reconsider his determination and postpone his motion to reconsider until after the vote is taken.

Mr. SPENCER—I have already stated my objection to doing that as it would then be inapplicable.

Mr. A. J. PARKER—Not at all. It depends on the result of the vote.

The question was put on the motion of Mr. Spencer to reconsider, and, on a division, it was found that no quorum had voted, there being 41 ayes and 31 noes.

The CHAIRMAN—The Chair is of opinion that there is a quorum present.

The vote was retaken, and the motion was declared carried by a vote of 48 to 36.

The question recurred upon the amendment proposed by Mr. Spencer, which was read by the SECRETARY as follows:

"The justices and judges of the present supreme and superior courts, and court of common pleas shall be justices and judges of the said courts hereby established, during the terms for which they were respectively elected."

The question was put on the amendment of Mr. Spencer, and it was declared carried.

The question recurred on the amendment offered by Mr. Church.

Mr. FOLGER—That amendment of course will not be practicable now.

The CHAIRMAN—It still remains before the committee.

The question was put on the adoption of the amendment of Mr. Church, and it was declared lost.

Mr. E. A. BROWN—I move to amend section 16 by striking out the word "departments" in the second line, and inserting the word "districts." Also to strike out all after the word "city" in the sixth line and insert the following:

"The justices of the supreme court elected under this Constitution shall hold their offices for eight years. The judges of the superior court of the city of New York shall hold their offices for six years, and the judges of the court of common pleas elected under this Constitution shall be so classified that with those then in office two shall go out of office at the end of every two years, and after such classification the term of office of said judges shall be six years, and the term of office of the judges of the superior court of the city of Buffalo shall be six years."

Mr. BECKWITH—I ask for a division of the question, to vote first on striking out the word "departments" and inserting "districts." I am in favor of that part of the proposition, for I think that the judges should be elected in their respective districts. I see by section 6 that it provides that the State shall be divided into four departments, and each department into two districts.

Mr. E. A. BROWN—The second part of the amendment is intended to be as far as practicable the precise language of the present Constitution upon the same subject.

Mr. A. J. PARKER—I hope this amendment will be adopted. It is a change, I think, which will go further to make this article acceptable than any other that has been made. It enables each district to retain the control of the election of its own judges, thus securing the requisite number. I believe it will cure many of the evils that will grow out of the provisions that have been made here this evening.

Mr. EVARTS—I hope the amendment will not prevail unless this Convention is prepared to reject the system proposed by the majority of the committee for the supreme court, and shall adopt

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the system of the Constitution as it now is. Several votes have been taken upon this question, and thus far the constitutional provision as proposed by the committee, giving the departments a larger constituency in the election of judges and fewer divisions of the State, has been sustained by the votes of this Convention. This is but one of the test questions, and the Convention in voting upon it must understand that they vote substantially for the system of the Constitution as it now is if they vote for the election by districts and against the effort to give a larger constituency, fewer divisions of the State, and a better arrangement for the selection of judges and communication of judges between the different parts of the State.

Mr. BECKWITH—I hope the proposition —

The CHAIRMAN—The gentleman from Clinton [Mr. Beckwith] is not in order except by unanimous consent, having spoken once upon the question.

Objection was made.

Mr. E. A. BROWN—I would say that the amendment as hastily drawn may need some modifications; but not in this part as now pending as between "districts" and "departments."

Mr. BECKWITH—I think that by electing judges —

The CHAIRMAN—The Chair must again remind the gentleman from Clinton [Mr. Beckwith] that he is not in order except by unanimous consent.

Mr. BECKWITH—I supposed there was no objection.

The CHAIRMAN—The Chair heard an objection, and hears it again.

Mr. ANDREWS—I certainly concur with the gentleman from New York [Mr. Evarts] in hoping that this Convention is not to retrace its steps, and to set aside the work which has been done up to this time in respect to this report; because, if this motion shall prevail, it will, in my judgment, lead to the retention of the present system of district courts in the State. I submit that the main advantage of the system, as reported by the Judiciary Committee, is in the change which has been reported providing that there should be a division into departments, instead of districts, as under the existing system; and by providing, also, that those departments should be twice the area of the present districts, in order to give a wider range of selection, in order to establish fewer general terms, and in order to improve, as has been shown it will be likely to do, the character of the court and of the judges in the State. How can we adopt the amendment which is now proposed, without following it by the restoration of the other parts of the system? What propriety is there in dividing the State into departments at all, if judges are to be elected by districts, and not in the departments into which the State is divided? We are to have departments, each department representing a common interest; all the judges in a department representing a common constituency; and it would be a strange incongruity to introduce into that system, to divide the local feeling and interests of the people in the different portions of the department, by providing that in the most important respects they should continue to act as separate districts, and not as parts of one common department. I voted for the minority principle of representation. For one, I desire to secure the best court which it is possible to secure, and I care not one whit whether democrats or republicans in politics are elected judges of the State, provided they are men of ability and learning, fitted for the positions for which they are designated. But now, that the minority principle is voted down, I ask whether gentlemen should then resort to the consideration, how will this election by departments affect the political distribution of the judges who may be elected within the State? I trust that this Convention will have sufficient regard for its own consistency to adhere to the work which we have done up to this time, and to reject this amendment which has been proposed.

Mr. C. E. PARKER—May I inquire of my friend from Onondaga [Mr. Andrews], what advantage is gained by dividing the State into departments instead of into districts?

Mr. ANDREWS—I submitted my views upon that question at some length the other night. Whether those views were satisfactory or not I am unable to say. I can add nothing, however, to the suggestions I then made upon the subject.

Mr. C. E. PARKER—I did not hear the remarks, and therefore cannot say whether they would be satisfactory or not.

Mr. BECKWITH—I desire to ask the gentleman a question. The gentleman from Onondaga [Mr. Andrews] says it will be inconsistent with what this committee have already done. I would like to ask the gentleman why the committee provided that the department shall be divided into two districts, and then provide in another portion that one-half of the justices shall reside in the districts in which they were elected, and whether there is any thing inconsistent in those provisions?

Mr. ANDREWS—There is, in my judgment, an inconsistency in separating the constituency for the purpose of elections when the offices to be filled are to be offices of a larger territory than the districts in which they are elected; but in the location of officers within a certain territory it may or it may not be proper to provide for the location and distribution of those offices throughout the department.

Mr. BICKFORD—I hope that the amendment offered by the gentleman from Lewis [Mr. E. A. Brown] will prevail—striking out "departments" and inserting "districts." I will give briefly this reason for it: We cannot close our eyes to the fact that gentlemen residing in the third judicial district, belonging to what is known as the democratic party, consider that the majority is with them in that district; and they think that if put with the fourth district the majority will be republican. We wish to make a Constitution which the people will accept. We must be practical men, and we will certainly, if we do not adopt this amendment, array the democratic party in the third district entirely against the new Constitution. It will appear unwise in the consideration of every man who thinks on the subject, and we cannot be blind to it. In the next place, if we are to elect eight judges in a

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partment, and require that four of them shall reside in each district, how is that result to be secured unless we elect them by districts? Suppose that five who reside in one district get the highest votes at the election, how are we going to avoid the five being elected? It is impracticable; it is a scheme that cannot be carried out. The only way in which we can arrive at that result, that four shall reside in each district, is by providing that they shall be elected by districts. It cannot be arrived at in any other way. It is impossible. There is, therefore, the utmost propriety in this amendment, and every consideration, it seems to me, goes in favor of its adoption.

Mr. HAND—I want to ask the gentleman from Onondaga [Mr. Andrews] how he proposes to secure this; suppose all the judges of the department should reside in one district, who shall say which of them shall remove into the other district? How can that matter be arranged so that one-half shall reside there?

Mr. ANDREWS—An amendment is now pending and lying on the table requiring the judges elected to reside in the respective portions of the departments in which they reside at the time of election.

Mr. HAND—Then they might all reside in one district.

Mr. ANDREWS—Oh, no; not at all.

Mr. HAND—Certainly, if they happen to reside there when elected. If you require that they should reside an equal number in each district and when we elect them they all reside in one district in the department, how are they to be changed to the other department so as to reside there through their official term?

Mr. FOLGER—I would remind the gentleman from Broome [Mr. Hand] that while we were on this section the gentleman from Onondaga [Mr. Comstock] offered an amendment to obtain that end, but at that time the gentleman from Orleans [Mr. Church] had proposed an amendment providing for a designation by a minority and the one offered by the gentleman from Onondaga [Mr Comstock] was temporarily withdrawn until that was disposed of; but it will be renewed as I suppose. It requires that at the time of the election and after the election they shall be divided equally between the districts.

Mr. COMSTOCK—I would like to hear the amendment read once more.

The CHAIRMAN—It is to strike out the word "departments," in the second line, and insert the word "districts."

Mr. COMSTOCK—It might be well enough to remind the committee that this question as to the election of a bench of the supreme court is already decided by the vote of the committee, to take the old bench, the whole of it, and out of it to construct a supreme court. It is only the question of how a vacancy shall be filled hereafter, which is before us.

Mr. RATHBUN—Previous to the recess taken at two o'clock, the committee had gone through with and disposed of section 11, and had settled down and adopted provisions in that section providing for the designation of general terms of the supreme court, a point on which there had been great controversy, and in reference to which several amendments had been proposed and rejected by this committee. That section, if I recollect, provides that no judge shall sit upon the bench in review of any decision made by him upon the trial of causes. That left the whole subject still in difficulty. It did not go far enough. It left it so that a judge upon the bench, when a cause was called on that he had tried, would be required to vacate his seat and remain absent during the argument; and the next cause might require another judge to vacate his seat and remain off the bench until that cause had been decided, and the next one might result in the same thing; so that the judges would be continually leaving the bench, first one and then another, during the whole process of the argument of causes at general term, and yet the difficulty complained of would remain precisely the same as though the judges remained upon the bench and heard the arguments. That was one of the difficulties in regard to the report of the committee, and it was one that has been referred to and discussed by a very large number of delegates on this floor. Before leaving section 8 such provisions were added by way of amendment as to obviate the objections upon that subject entirely. It left us a general term so organized and so arranged that they would not be called upon to interfere with the trial of causes in the department wherein they presided as judges of the general term. We have got over that, and we have settled down upon a plan which seemed to me to be one of the best that had been talked about—one of the best suggested—one that obviated the most serious objection to the present organization of our supreme court: and I felt encouraged that the plan to be adopted was to be about the best that had been suggested by any body. My objection to this amendment is that it overturns all that and we go back into the same difficulty. We are surrounded by the same trouble, and we shall have organized a court upon the same ground precisely as the one which we now have, and which has been objected to by every body. I am opposed to it because I do not wish —nor do I believe that any gentleman of this Convention wishes—to go before a supreme court at general term and argue a case tried by the judges of that court.

Mr. SMITH—I wish to ask a question for information. I understand the gentleman to state that the amendment which was offered prohibiting judges from sitting at general term in the district where they presided at circuit, was adopted. My recollection was that that was rejected.

Mr. RATHBUN—I know that was adopted. I ask that the Secretary will read the amendment that was adopted with regard to the judges presiding at general term.

The SECRETARY read section 8, as follows:

Provision shall be made by law for designating from time to time the justices who shall hold the general terms, and also for designating from their number a chief justice of each department, who shall act as such during his continuance. Four judges in each department shall be designated to hold general term, and three of them shall form a quorum. And the justices so designated may sit at general term in any district except as the

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Legislature may otherwise provide. It shall be competent for any one or more of said judges to hold special terms and circuits, and preside in any of the courts in any county, as the Legislature may by law direct.

Mr. RATHBUN—That is the amendment to which I referred. Now, sir, under that amendment it is competent for the Legislature to give us a general term which cannot be called upon to review any cases decided by them at a circuit. If you go back to the old district system, you must have the same judges at general term as you have to try your causes at circuit, and you abandon the entire guard and protection given by that section in creating a tribunal entirely unconnected with the trial of causes. Now, sir, if that is abandoned—and it must be if this amendment prevails—then I think the sooner we go back and say that the Constitution of 1846, in regard to the supreme court, shall remain unchanged, the better. I see no possible occasion for attempting to tinker with this plan, unless we adhere to the provisions contained in section 8.

Mr. YOUNG—If there has been any reason given to this Convention in support of this department system, it is that it will reduce the number of general terms and thus reduce the number of conflicting decisions. If that is not a reason, then I want to know from this Convention what reason can be assigned, except the political advantage to be gained by one party over the other, by thus dividing the State into four departments. If these judges are to be elected from their respective districts as they are now constructed, I do not see why, after they are elected, a general term cannot be selected from the judges in each department in which the districts are situated just the same as if the judges were elected from each department without any regard to districts. For instance, the third and fourth judicial districts will be united to make the second judicial department of the State. If four judges are elected from the third judicial district, and four from the fourth judicial district, it will make the same number of judges in the department as if the eight judges were selected from that department indiscriminately from the fourteen or sixteen counties that make up the department without any regard to the present judicial districts. I cannot see any earthly difference, and I cannot see why a general term in that department, to review the decisions of the circuit and inferior courts, cannot be formed or organized by an act of the Legislature, or by an arrangement between the judges themselves, just as well as if the judges were elected from those fourteen or sixteen counties which constitute the second department without any regard to districts. But I see an advantage in this amendment: if the judges are elected from the districts they will be more evenly distributed throughout the department, and it will be more convenient for them to hold special terms in almost every county in the department, which every member of the profession will readily admit will be a great convenience, not only to litigants, but to the profession. And the same arrangement can be made for the selection of a certain number of these judges to hear appealed cases only, and for a certain number of these judges to sit at circuit and special term, as could be made if the judges were elected indiscriminately in the whole departments; or the judges in one district may be assigned to hold the general terms in the other district, and *vice versa*, which will avoid the very grave objection of having judges sit in review of their own decisions. I can see no disadvantage at all from this plan, but I can readily see a political advantage growing out of the division of the State into departments and electing the judges by departments—a political advantage in making three of the departments republican and one democratic, as the State has ordinarily voted, though not, perhaps, as it voted last fall, which seemed to be, although I hope it will not hereafter prove to be, on exceptional occasion. If gentlemen are sincere in their professions against the present system of having judges sit in review of their own decisions no plan can be devised better calculated to remedy the evil.

Mr. KRUM—There seems to be a reason which I have not heard advanced here why this amendment should not prevail. This Convention has divided the State into four judicial departments and eight judicial districts. This Convention has also determined that four of the judges of each department shall reside in each of the districts in that department. By a provision that we have also adopted, the Legislature may undoubtedly determine that four judges in one district may or shall hold the general term in the other district, and so *vice versa*; so that in all probability the judges of one district will perform the general term duties in the other district. Now, I claim it to be but fair, that the electors of a department where the judges are to perform their duties, should have the right of voting for the judges that are to perform such duties, and therefore I claim that the judges of the various departments should be voted for by the electors in those departments, because it will not do to put four judges appointed in a district to perform the judicial duties of that district at general term, or even at the circuits, without permitting the electors in that district to have a voice in the selection of those judges. For instance, suppose the third district is attached to the fourth, the Legislature may provide by law that the judges of the third shall hold general terms in the fourth district, or that the judges of the fourth shall hold general term in the third. Now, I submit it is but fair that the electors of the third district should have a voice in determining who the judges of the fourth district shall be that are to hold general term in the third district. But this cannot be done by confining the election of the judges to a single district, and it can only be done by electing them over the whole department.

Mr. YOUNG—Is it not now the constant practice of judges from the rural districts to hold courts in the city of New York?

Mr. KRUM—I believe it is.

Mr. YOUNG—There is no provision—

The CHAIRMAN—The gentleman from Ulster [Mr. Young] is not in order.

Mr. KRUM—I will answer the gentleman from Ulster [Mr. Young]. It is only as a matter of favor or courtesy that any judge from the

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...ate goes down to New York city to hold circuits there. There is no law that compels judges to do so, but there is a law that permits them to do so, and it is a mere matter of courtesy on their part. But the Legislature may determine, in the instance I have stated, that the judges of the third district shall perform the judicial duties of the general term of the fourth district, and I claim that the electors of the fourth district have a right to determine, so far as they can, who are to be the judges that shall hold courts in that district.

Mr. BECKWITH—I would ask the gentleman from Schoharie [Mr. Krum] if judges from the general districts do not frequently sit in other districts?

Mr. KRUM—Yes, but it is a mere matter of courtesy.

Mr. BECKWITH—Is there any objection to it; or has there been any objections to it?

Mr. KRUM—There is no objection to it if judges are to sit in review of their own decisions; but, sir, I understand this to be an objection to the present organization of the general term, that judges have to sit in review of their own decisions. Now, if the Legislature determines that the judges of the fourth district shall hold general terms in the third dirstrict, and that the judges of the fourth district shall not hold circuits in the third district, then we most effecually accomplish the purpose designed, to wit: that no judge shall sit in review of his own decisions.

Mr. E. A. BROWN—I wish to say a word in reply to the gentleman from Cayuga [Mr. Rathbun].

Mr. RATHBUN—I have not spoken upon this amendment.

Mr. E. A. BROWN—I insist that the objection raised by the gentleman from Cayuga [Mr. Rathbun] does not exist, and that the proposition to elect in districts where you have already provided that the judges shall reside where elected, does not at all interfere with the provision that the judges in one district shall not hold courts in any adjacent district. Now, the gentleman from Schoharie [Mr. Krum] has interposed another objection, as he states a new objection, that it is not proper for the people in the third district to have their cases heard and decided by judges in the fourth district for whom they cannot vote. We have heard a great deal upon this floor from time to time upon the subject of the independence of the judiciary. You have provided for four general terms, and that the eight judges of those general terms shall be divided so that four of them shall be in one district and four of them in another district of the department. You elect them by districts. When those elected in district number four hold court in another district they can be just as independent and honest as they please without any fear of being voted out of office by the electors of that district, and *vice versa;* an argument decidedly in favor of the independence of the judiciary, for which distinguished gentlemen have been so anxious upon this floor. I think it is an important consideration that the constituencies from which judges are elected should be large enough to allow a considerable range for choice, so that the people may be enabled to select suitable men, but at the same time, not so large but that the electors generally know the ability, character and standing of candidates who come before them for their votes. Judges will be elected by people who know something about them, instead of those who know very little of the candidates, as would often be the case in a greater district.

The question was put on the amendment of Mr. E. A. Brown, and it was declared lost.

Mr. HARDENBURGH—I move to reconsider the vote by which the amendment has just been rejected.

The question was put on the motion of Mr. Hardenburgh to reconsider, and it was declared lost.

Mr. HALE—I am unable to see that the adoption of this amendment will essentially impair the system as adopted by this committee. The advantage that this system has over the old one is in the reduction of the number of general terms, and, as was remarked by the gentleman from Ulster [Mr. Young], I do not see that providing that one-half of the judges from each department should be elected by each district, as well as reside there, will affect the system. Now, there are some reasons why I think this amendment ought to prevail. One reason was mentioned by the gentleman from Jefferson [Mr. Bickford]. We have got to look at this matter practically. It seems to me that the vote of the majority party in the third district will be pretty unanimous against a Constitution which shall contain a provision like this. There is another practical reason which occurs to me from the fact that I formerly resided in the second district for some years. I am sure that as I then felt, and as I should feel now if I resided in that district, I would be very reluctant to have my judges chosen by the electors of the city of New York, although after the commendations I have to-day heard bestowed upon the judges of that city by my friend from New York [Mr. Pierrepont], it would almost seem that we ought all to desire that that city should elect all our judges. Nevertheless, I retain my old impression in regard to this matter so strongly that, I am unwilling to secure in the second district what I think will be a very universal opposition to this Constitution by insisting upon what does not seem to me at all essential.

Mr. PIERREPONT—I understand the gentleman who has just taken his seat [Mr. Hale], to state that there are some reasons why he is in favor of this amendment; but, if I understand him, the only reason he has given is that in a district where the democratic party is very strong the tendency would be, if this were adopted, to make those people in that district vote against the Constitution. If I am wrong I wish to be set right.

Mr. HALE—The proposed amendment puts the third district and the fourth together, and the republican majority in the third district, is very much larger than the democratic majority, and therefore I think the democrats in the third district will not be in favor of it.

Mr. KRUM—I would like to ask the gentleman from Essex [Mr. Hale]—

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The CHAIRMAN—The gentleman [Mr. Hale] has not the floor; the gentleman from New York [Mr. Pierrepont] has the floor.

Mr. PIERREPONT—Now, I imagine that generally, it will be found in the region of the second, third and first districts the sentiments upon this subject of the democrats, to whom the gentleman from Essex [Mr. Hale] refers, will be found very nearly the same. I think from the vote which has just been taken by this Convention, as well as from what I have heard from the democratic press from that part of the State upon this subject, it will be found that the democrats of that part of the State will the more readily vote for this Constitution in the form as it is now proposed, instead of having the voting by districts. Now, it is a great mistake which gentlemen make if they suppose that the people of that region of the State do not wish to get good judges. Those people are as desirous to have good judges as they are anywhere; and it was believed, I think, by nearly all the members of the committee that this greater range for the selection of judges, which the majority of the committee propose, would tend to make a better bench, and would tend therefore to the improvement of the judiciary of the State, particularly of that department to which the gentleman from Essex [Mr. Hale] has alluded. If this be given up, then we have lost nearly all that we thought we had gained; then, as has been well said, we had better return immediately to the system under which we are now living, and adopt it in the new Constitution, instead of making any change. The gentleman from Essex has again alluded to the judges of the city of New York, as though there was some chance to throw a slur upon them, because they had been defended. Now, I do not understand this. I do not understand why gentlemen of this Convention are disposed to make suggestions in reference to the judges of the city of New York. There are many of them here, and I undertake to say, that in proportion to their number, they do as much work as the judges in any other part of the State; that they perform as much labor for as little pay, in proportion to the expense which they are compelled to incur; that they are as upright, that their decisions are as well sustained, and that there is no occasion to find any special fault with them, any more than with the judges in the other parts of the State. Now, I am earnestly anxious that this system, which has been here proposed by this committee, should not be broken in upon, and that the motion to reconsider will not prevail.

Mr. SMITH—It seems to me that there is a misapprehension in the minds of gentlemen in regard to the real issues now pending under this amendment. I do not understand that it is a question between the department system and the district system. For one, I should have no hesitation in deciding in favor of the department system, instead of districts, if that were the issue, because I should be very reluctant to do any thing that would interfere with a reduction of the general terms of the State. I understand that there is already a provision adopted by which four judges in each department must reside in a particular district. If I am mistaken on this point I shall be glad to be set right, because that would alter the case very materially. But as I understand it that provision has already been adopted, so that the general term might be made up from the departments just as well if this amendment of the gentleman from Lewis [Mr. E. A. Brown] should prevail. The only question is whether the four judges residing in one district shall be chosen by the electors in that district or in the department. Now, the gentleman from New York [Mr. Pierrepont] says that we are to derive a great advantage from the election by departments because of the wider range for the selection of our judges. If we were at liberty to draw our judges from the departments at large without regard to locality, then there would be force in that suggestion but we are confined, in the selection of our candidates, to a particular district. We are not at liberty to take more than four from each district in the department. What propriety is there in permitting the electors in one district to vote for judges residing in another district? If not permitted to do this how would it interfere with the department system, so far as the organization of general terms is concerned? I confess I do not perceive, but if I am wrong I wish to be set right, because, as I said before, I do not wish to interfere with the department system proposed by the majority of the committee.

Mr. FOLGER—I move that the committee rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Folger, and it was declared carried.

Whereupon the committee rose and the PRESIDENT resumed the chair in Convention.

Mr. C. C. DWIGHT, from the Committee of the Whole, reported that the committee had had under consideration the report of the standing Committee on the Judiciary, had made some progress therein, but not having gone through therewith, had directed their chairman to report that fact to the Convention and ask leave to sit again.

The question was put on granting leave, and it was declared carried.

Mr. WALES—I move that the Convention do now adjourn.

The question was put upon the motion of Mr. Wales, and it was declared carried.

So the Convention adjourned.

SATURDAY, December 14, 1867.

The Convention met at ten o'clock pursuant to adjournment.

Prayer was offered by the Rev. A. A. FARR.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. GOULD—I ask leave of absence for Mr. Corbett of Onondaga, until Wednesday next.

There being no objection, leave was granted.

Mr. COMSTOCK—I beg leave to submit a report from the Committee on the Salt Springs prefacing it with a brief explanation. The committee has been engaged upon two questions: first, whether the existing restraint in the Constitution which prohibits the sale of the salt springs shall

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moved so as to permit their being disposed
The chairman of the committee has made a
t recommending the removal of that re-
, in which the majority of the committee
r. I probably shall express no opinion in
bservation upon that question. With that
ion I believe the committee, one member
pted, concur with the chairman. The other
on which has engaged the attention of the
ittee is the one whether there shall not be
d in the Constitution an article imposing an
ional duty or tax upon salt for the purpose
blic revenue. In the report which I am
t to submit, that question of revenues and of
is considered. My report concludes with a
mmendation that the Constitution shall pro-
any tax upon salt for a revenue. The report
e chairman of the committee contains a re-
mendation that the Constitution shall impose
for revenues of three cents per bushel.
e two propositions are directly opposed to
other. Neither of them commands the
nt of the majority of the committee. The
rity of the committee is opposed to impos-
any additional duty upon salt by constitution-
enactment; not concurring, however, in my
recommendation that the imposition of duty
ld be prohibited by the Constitution.

The SECRETARY read the report as fol-
s:

The undersigned, one of the Committee on the
lt Springs of this State, submits the following
ort:

The attention of the committee has been prin-
ily directed to the question of imposing, by
stitutional enactment, a duty on the salt man-
factured from said springs for the purpose of
enue. This question involves the relations of
e State and of individuals to those springs, and
variety of other considerations connected with
e manufacture of salt and the trade in that ar-
le.

In the first place, the undersigned is of opinion
at if any duty for such a purpose ought to be
posed, the rate of duty is eminently a question
r legislative discretion, and altogether unsuited
become the subject of constitutional provision.
In his judgment it is the province of constitutional
organic law, besides establishing, and to a cer-
in extent regulating, the departments and ma-
chinery of government, to ordain only those
things which depend on fixed facts and princi-
ples; in other words, those things only which are
suitable at all times and in all circumstances.
The amount of duty, if any, to be levied for rev-
enue purposes on the salt produced in this State
cannot be classed among subjects of this descrip-
tion. The question, in its very nature, is one to
be affected by circumstances not durable in their
character, but, on the contrary, liable to fluctua-
tion and change. The financial situation and
wants of the State, the condition of the salt man-
ufacture itself—sometimes prosperous, at other
times depressed—the competition with other
known sources of supply, the possibility always
existing of new and fresh discoveries of brine, or
crystalized salt, pouring new and fresh supplies
into the markets of the country—all these are
circumstances of the character referred to, which
seem to mark the subject as belonging to the do-
main of legislative enactment and wholly out of
place in the fixed and organic law of the State.

The undersigned would refer particularly to
other existing and prospective sources of supply
which necessarily limit and depress, and may here-
after more and more limit and depress, the pro-
duction and sale of salt from the springs of this
State. He believes there is not on the globe or
under its surface any natural product necessary
for the use of man found in greater abundance
and fitted for consumption with greater cheapness
than the article of salt. In spite of a tariff in-
tended for protection as well as revenue, about
one-half the salt consumed in this country is im-
ported. From the Danish, Dutch, British and
French West India Islands, from England, France
and other countries, not far from 14,000,000 of
bushels are annually brought into the United
States. In this country inexhaustible brines and
crystalized salts are found in Michigan, Ohio, Vir-
ginia, Louisiana and other places. New discov-
eries are being constantly made, among which
may be mentioned a brine of great purity and
strength in Canada, upon the shore of Lake
Huron. In the southern part of the island of San
Domingo exists a salt mountain or elevation of
the purest rock salt on the globe, and sufficient
in quantity for the supply of all mankind for gen-
erations to come. This vast deposit, easily ac-
cessible from the southern coast of the island, is
now owned by citizens of New York, under favor-
able grants from the Dominican government,
and the initiatory steps have already been taken
for its development and for introducing the salt
into the markets of the United States.

These general facts are of great significance.
It must be evident to every one that the produc-
tion of salt in this State has an intimate relation
to other sources of supply, both foreign and do-
mestic, and that every additional burden imposed
on that production, gives a new and fresh advan-
tage to the competitions which press upon us
from every quarter. The facts referred to have
a constant although irregular influence upon the
production and market value of our own salt. Our
own manufacturers cannot, in general, sell for
higher prices than those which are asked by rival
interests competing in the same markets. At this
time and under the tariff imposed by the federal
government, they are barely able to maintain a
close and doubtful competition on the sea-board
with the salt produced abroad at low prices, and
imported as ballast or at low freights. A similar
struggle is constantly maintained in the Western
States. Every bushel of salt we send there meets
both a foreign and domestic rival. We are able
to control the market only in a limited district of
country consuming less than two millions of
bushels, and composed of a part of this State
and a much smaller portion of Pennsylvania.
The proposed tax is simply an addition of so
much to the cost of manufacturers, and every
one can see that every such addition tends to ex-
pel us from the markets where competition is al-
ready close, and to contract more and more and
into smaller and smaller dimension the circle into
which competition does not enter. There might
be wisdom and statesmanship in this policy if it

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ended in any degree to cheapen the price of one of the necessities of life. But to burden and tax the production of an article is not the way to cheapen its cost and value in the markets. The effect, plain enough to be obvious to every understanding, must be to compel the producer to withdraw from those markets where he has maintained himself with difficulty, and to demand higher prices in those of which he is still able to keep possession.

We have referred to the protection afforded by the duty on imported salt as one of the circumstances affecting the present question. That protection is of vital importance. There is probably no domestic interest more dependent in this respect on the legislation of Congress than the salt manufacture. If this protection were withdrawn the salt of this State would be driven from the markets on the sea-board and tide waters and from all the Western and North-western States lying upon the Mississippi and Ohio rivers. The effect upon our own salt manufacturing interest would be so immediate and so injurious that every one would regard it as the most suicidal folly to impose upon that interest a new and onerous burden to raise revenue for the use of the State. This would be so if the measure were proposed as one of legislation merely. No one, we are sure, would seriously think of proposing such a measure, because its effect would be the utter prostration of the interest to be affected by it. But what are we now asked to do? We have no control over the legislation of Congress. The protection afforded to-day may, without our consent, be withdrawn to-morrow, and yet we are asked, by an irrepealable provision of organic law, to impose on our own salt manufacture a duty which nothing but the highest condition of prosperity would justify or excuse. We have no guaranty whatever against the repeal or essential modification of the tariff on foreign salt. There are many prejudices and there are plausible theories hostile to its continuance. Nothing can more clearly demonstrate the impolicy of a constitutional tax, which we shall find ourselves unable to repeal when the protection we now have may be wholly or partly withdrawn, and when such a tax may be fatal to the prosperity of the salt manufacture in this State.

It is proper to add in this connection that, when the tariff laws were adjusted on their present basis, Congress had under careful consideration the question of levying an internal duty on the manufacture of salt. The salt producing interests of the country were represented before the appropriate committees of both houses, and the subjects both of foreign and domestic duty on that article were thoroughly examined and discussed. The unanimous conclusion was against imposing any duty for internal revenue on domestic salt, and this conclusion was unanimously approved by Congress. Is it wise, then, for the State of New York to impose a serious burden upon one of its own important interests—a burden from which similar and rival interests in the other States are wholly exempt. In no other State of the Union is there any internal tax or duty on salt. In all the markets of the West we meet in close competition with the salts of Michigan, Ohio and Kanawha. Those important interests are entirely free from State exactions, while we in New York deliberate whether our own salt shall not be subjected to new and heavier burdens, which can only benefit our rivals.

There is, however, this difference between the relations of this State to its salt springs, and that of other States to similar interests. The State is the owner of the springs, while everywhere else they are owned by private individuals or companies. On this distinction an argument is sometimes founded in favor of increased exactions upon the salt manufacture for the benefit of the public treasury. This argument is not based upon any real or supposed necessity of raising revenue from salt for the use of the State, and it has no relation to the policy or impolicy of singling out this branch of industry for taxation. It is, on the contrary, an argument founded on the theory that the salt produced from the brines of the State and sold in the market, is the product or result of a business carried on jointly by the State and the manufacturer, that each of the parties contributes capital or labor, or both, to the common enterprise, and therefore that the profits should be shared by the State and the manufacturer, according to some fixed rule of division between them. This view of the subject has been urged in the committee, and it is next to be considered. Proceeding on this theory we put aside all questions of mere revenue, of wise or unwise taxation. We have nothing to do with statesmanship, and we come down to a question simply and purely of equitable jurisprudence in a case of partnership or *quasi*-partnership between the State and the individual. In this view of the subject what are the existing rights of the parties? Is the State entitled to withdraw from the common concern any annual sum for its own use, and if so, what sum? This question depends upon facts easy to be ascertained and upon principles which have long been settled.

Pursuing the theory of the situation here suggested, it becomes necessary to know the amount of capital contributed by the State, and the manufacturers individually, and the sums received or withdrawn by each from the business, thus carried on in common. On the principles or analogies of a partnership or joint enterprise, there is no other mode of arriving at the existing equities between the parties The contributions of the State, then, are first a sum of money invested by the State in the year 1795, in the purchase of the springs and land around them from the Indians, amounting to about $11,000. That those springs have since become much more valuable is a fact wholly irrelevant to the question under consideration. The assumed partnership between the State and the manufacturers commenced with the original purchase of the property and, on a partnership accounting, the State is entitled to credit for the purchase-money only and the interest thereon. Again, if they have since become very valuable that result is wholly due to the private capital, labor and enterprise of the individuals who constitute the other party in the supposed association. It is enough for any present purpose to say that the increased value of the springs according to the plainest principles of law

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and equity, is to be regarded as equally for the benefit of both the parties, and gives the State no equity against the individual. It may be said that the State has always had the reserved power and right at fixed periods of time to dissolve the partnership, and take the exclusive possession and control of its property.

But this right can only be exercised on the fundamental condition that the State shall first compensate the individuals for their works and erections built upon the lands of the State, and dependent for their entire value upon the use of the brine from the springs. This condition flows from recognized principles of equity, and from an express provision of law in the nature of a pledge of the public faith. In the fulfillment of this equity and the redemption of this pledge the State would be obliged to pay to private parties and companies a sum much greater than any estimate which has ever been placed upon the value of the salt springs. Unless, therefore, the State shall see fit to sell the salt springs and lands around them it may be safely assumed that the property of the State and of the manufacturers is incapable of being divorced and must remain inseparably connected. The owners of the works and erections cannot dissolve this connection because their erections are incapable of removal from the lands of the State, or of use and enjoyment separate from the springs. The State cannot dissolve it because an exclusive possession cannot be taken except under the conditions already referred to, requiring compensation to be made to private owners, amounting, as will presently appear, to several millions of dollars.

The consideration paid by the State on the original purchase of the salt springs and reservation is not, however, by any means the whole of its expenditure. The superintendent of the springs has furnished to the committee a carefully prepared inventory and statement of all the other property of the State connected with these springs, consisting of salt wells, pumps, pump-houses, machinery, reservoirs, aqueducts, etc., the whole of which he has valued or estimated at $311,710. The original cost of these works, erections and fixtures does not precisely appear, and perhaps cannot be shown. But it is entirely safe to assume that such cost does not exceed the valuation just mentioned. The total investment made by the State, then, in the springs and salt reservation, and in all works and erections connected therewith, is the original purchase-money, about $11,000 added to this sum of $311,710, making in all $322,710.

We are next to look at the other side of the account in this common enterprise, and we have the data before us furnished by the superintendent. There are upon the salt reservation or upon other lands contiguous to the springs 316 salt blocks erected and owned by private parties, valued in the aggregate at $2,205,500. There are 44,083 solar salt vats and covers owned by individuals and companies valued in the aggregate at $2,381,517, and there are salt mills owned in like manner valued at $138,000. All these valuations amount to $4,725,017. From the evidence before the committee we consider this a high valuation, and very considerably in excess of the original cost. It will not at all affect the present question if we deduct over $2,000,000 and call the original cost of these works $2,700,000, or even $2,500,000. We reach then the following result: The original investment of the State in the springs, lands, and property used in the production of salt is $322,710. The original investment of private individuals and companies is at least $2,500,000, or between seven and eight times greater than that of the State. It can be said with truth that this private property is worthless without the salt springs. And so with equal truth it may be said that the springs would be of little value without the immense development they have reached through private capital and enterprise. The true mode of determining the equities between the parties is to compare the capital sums invested by each, and then to ascertain what has been drawn by each from the common concern.

And it remains, therefore, in order to have a complete view of the subject, to ascertain if possible the profits derived from the production of salt and the distribution of those profits. In the first place it will be found on examination that the expenditures of the State already referred to, incurred from time to time in erections and fixtures, have in all or most cases been reimbursed to the State during the year in which they were incurred out of the annual tax or duty upon salt, so that the capital sum invested by the State as above mentioned, almost wholly or entirely disappears from the account. But it is next to be stated that over and above the sums thus expended and reimbursed, the State has received, by and through the duties it has demanded, a net revenue of between $3,000,000 and $4,000,000. From 1825 to 1846, under the constitutional duty imposed for the purpose of paying the canal debt, the net revenue received by the State over all expenditures was $2,900,616.50. In the year last mentioned the duties were reduced to one cent per bushel, which has yielded to the present time $421,582.55. These sums, amounting in the aggregate to $3,322,199.05, are to be considerably increased by the net revenue received prior to 1825, which cannot be exactly ascertained.

Such, then, is the financial relation of the State to these springs and to the business of producing salt therefrom. But that business has been attended by no such results to the manufacturers. They have had times and seasons of prosperity and of adversity. It is the opinion of those who have had the longest acquaintance with the business, that it has not yielded to the manufacturer a profit in the aggregate equal to the annual interest upon the capital they have invested. The evidence before the committee leads to this conclusion. It appears, therefore, that while the State has been reimbursed its expenditure, and has demanded and received a revenue equal to ten times the capital invested by it, the profit to the manufacturers has returned no part of their capital, and has, in fact, been less than that yielded in most other branches of industry.

This exhibit of the financial relations of the State and the manufacturer to each other and to the subject, is made because and only because a

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higher rate of duty upon salt has been urged on the ground of a supposed equity between the parties. It is manifest that no such equity exists. On the contrary, according to this mode of treating the subject, some equality in the distribution of profit should be reached before the State can claim any thing beyond the expenses incidental to its care and management of the springs. This principle would postpone the claims of the State for a long period of time.

Plainly, therefore, some other principle must be invoked to justify the proposed imposition of a tax or duty for the purpose of public revenue; and the only other principle which can be invoked is that of taxation upon the product of a particular branch of industry. And on this subject we beg leave to call attention to some other considerations. If it could be shown that salt will bear a special and peculiar rate of taxation without serious and lasting injury to the industrial interest engaged in its production, and if that ability to bear the burden is made the ground for imposing it, the same rule of action would require us to examine into all other industrial pursuits and trades carried on in this State, and to tax them all at specific but varying rates, according to capacity of each to endure the imposition.

If any branch of human industry is found to be in a prosperous condition it must be reduced to the horizontal level of other branches by a special and compulsory contribution to the treasury of the State. This principle of taxation has never been adopted in this State. Taxation in this State is imposed at fixed and uniform rates upon all real and personal estate according to valuations entered upon the assessment rolls, and except the article of salt we have in our State laws and policy no example of specific duties upon property or production. And yet this article, the only one taxed or proposed to be taxed specifically, has, probably, higher claims than any other to total exemption from all taxation. According to the soundest and most approved maxims of statesmanship, articles of universal use and absolute necessity ought to be free from burdens imposed for public revenue, and among these, salt, more than any other product of human industry, is to be ranked. It is as necessary to life and comfort as the air we breathe. As a prime necessity of life in all ranks of society, taxation upon it was once eloquently denounced by a distinguished statesman in the Senate of the United States. He declared it to be a tax upon the entire economy of nature and art, a tax upon man and beast, upon life and health, upon comfort and luxury, upon want and superfluity. He called it a heartless and tyrant tax which no economy could avoid, no poverty could stem, no privation escape, no cunning elude, no force resist, no dexterity avert, no curse repulse, no prayers could deprecate, a tax which invaded the entire domain of human operations.

A rate of duty upon this article higher than the present one existed prior to 1846. When the Erie canal was projected and undertaken it was very justly considered that the development of the salt springs, the production of salt, the extension of the markets and economy in price, would be immensely promoted by the completion of that work. For that special purpose, and that alone, a duty of twelve and a half cents per bushel was imposed. This was a duty which, under an enlightened sense of what their true interests demanded, was self-sought and self-imposed by that portion of the people of the State who were producers and consumers of Onondaga salt. The Constitution of 1821 required this duty to be maintained until the debt contracted in the construction of the Erie canal should be paid. That object having been accomplished the duty had been reduced to a low standard by constitutional amendment and legislative drawbacks before the year 1846, when the whole subject underwent the careful consideration of the Legislature. In the Senate it was referred to a select committee consisting of three gentlemen of eminent ability, Joshua A. Spencer of Oneida, Augustus C. Hand of Essex, and John Porter of Cayuga. That committee, upon the most elaborate examination, came to a unanimous conclusion which may be stated in their own language; they said, "To continue the present tax could only be justified upon the principle that salt is a proper article on which to raise revenue. This is inadmissible as well upon the ground that it is taxing one of the most indispensable articles of consumption and general use, to meet the expenses of government, as that would be levying a tax upon a portion of the citizens of the State for the benefit of the whole State." They accordingly recommended a reduction of duty to a rate which as they thought would simply cover the expense of the State in its supervision of the springs.

These views of the future policy of the State were accepted with great unanimity by the Legislature of 1846, and the duty was accordingly reduced to one cent per bushel, which was the rate fixed upon, not for any purpose of deriving revenue from this source, but with the avowed object of protecting the State from loss in the care and superintendence of the salt springs and reservation. From 1846 to the present time neither the salt duty nor the policy of the State in this respect has undergone any change.

The report of the Senate committee just referred to, condemned the salt duty as a tax upon one portion of the people of the State for the benefit of the whole. This argument deserves a moment's consideration. If sound and accurate it ought to dispose of the question forever. Its soundness cannot be well impeached, but it will have a truer expression to say that such tax is upon one portion of the people, for the benefit not of the whole, but of another portion. Ordinarily, the Onondaga salt is consumed by about one-half the population of the State, residing in the central, northern and western divisions. In the more southern portions, upon the sea-board and tide-waters, foreign salt has been hitherto mainly used. Now, whatever tax is imposed upon salt it is an addition of just so much to the cost, and by an inexorable law of production and trade, this addition must be paid at last by the consumer. Nothing further can or need to be said to prove that what is gained by one portion of our people in the taxation of this article for revenue—that portion which does not consume the salt—is lost by that portion which does con-

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same the article and pay the tax upon it. This is a condition of the question which must endure and it seems to establish the permanent injustice and impolicy of the tax. There is a still broader aspect of the question. Suppose it were true that the Onondaga salt is now used and will hereafter be used by all the people of this State. This fact would relieve taxation upon it from the injustice of burdening one part of the inhabitants for the benefit of another, but the question would remain whether there would be wisdom or policy in this mode of raising revenue. This question, in the opinion of the undersigned, is not difficult to solve. In the first place, nothing would be gained, because whatever revenue is thus raised for the benefit of the whole people, is paid by the whole people in the increased cost of production and price of the article. This proposition is one of mathematical precision, unless it can be shown that you may levy an internal tax on an article produced by labor and capital without adding to its cost. This surely, no one will pretend. If you tax the article you do not thereby diminish the capital or cost of labor required in its production. The cost of transportation to the consumer remains the same. You must add the tax, and the consumer must pay it. Nothing therefore is gained to the people of the State by levying in this manner a contribution to the public revenue. It may lessen to an inconsiderable degree taxation upon their lands and personal estates, but the same burden is transferred to an article of universal consumption. And in the next place we encounter the objection that without profit or rational motive, a single article of prime necessity is singled out for a specific duty in opposition to all our laws and rules of taxation, and to the most commonly received maxims of statesmanship.

The force of this argument would be in some degree modified if it were true that the increased cost of salt arising from taxation upon the article is now paid and will hereafter be paid by the people of other States who are or may be consumers. In that aspect of the question the tax might have an intelligible although an unjustifiable motive. But the tax is not and never will be paid by consumers in other States. It must and will be paid by the people of our own State who are compelled to use the Onondaga salt. The rule that the consumer pays the increased cost arising from taxation implies that a competing article equally adapted to his use and exempt from the tax is not within his reach. If it is within his reach the producer who is subject to the tax must either not sell at all or must sell at prices which are governed by the exempted competing article. Let us now look at the facts relating to the trade in Onondaga salt which the committee have carefully ascertained; something less than 2,000,000 of bushels of Onondaga salt are annually sold in the northern, central, and western portions of New York, and in the northern counties of Pennsylvania. In all this territory here mentioned, embracing a population of about 2,000,000, our salt meets virtually no competition, and has now for several years been sold at $2.25 per barrel, with cost of transportation added. At the exterior lines of this territory competition with other salts is encountered which requires the Onondaga manufacturer to go no further with his product or else to reduce the price, and the further these exterior lines of his trade are extended the more his prices must be reduced. It is both his policy and his interest to carry his salt further and further, until he reaches points where he cannot sell except at a positive loss, and both policy and interest will often prompt him to encounter temporary loss for the sake of keeping his ground in a close and disputed market. This general statement of the condition of the market, the accuracy of which is abundantly verified by the evidence before the committee, demonstrates that every addition to the cost of salt contracts the circle of exclusive trade, and contracts also the wider circle of territory in which competition can be maintained. Fully three-fourths of all the salt made from the Onondaga springs is sold in that outer circle of trade, where the people of this and other States are supplied from other sources, both foreign and domestic. In New York, and upon our tide-waters, and in those parts of New England which we can reach at all, the foreign article is met in great abundance. Last year the Onondaga manufacturers sold some 700,000 bushels in New York and neighboring markets at less than cost. In the same year nearly 4,000,000 of bushels were carried to the Western and North-western States, and sold with a very slight profit, or none whatever. There are some facts and figures verified before the committee which are very convincing on this subject. The salt manufacture has been carried on for several years past by a single company, organized under the laws of the State, which has conducted the business with vigor and with the greatest possible economy, undoubtedly, as the members of this committee believe, with much greater economy than would be possible under other circumstances. The books of the company have been produced and verified before us, which show that in the year ending in April, 1867, the aggregate profit made by the company was $107,016.58, including in the expenses a fair return in the nature of rent to the individual proprietors of the salt works. In producing this result, a cash capital was necessarily employed throughout the year, averaging at least one and a quarter million of dollars. Now this profit was wholly realized from sales in that limited district of territory already referred to, and lying almost wholly in this State, where the prices demanded were unaffected by competition with other salt. This general fact, in regard to which the slightest doubt does not exist, clearly proves that an increased cost of the article, arising from additional duties, must be drawn from consumers within the restricted market referred to, and therefore drawn from the people of this State. This is plain because the manufacturers could not maintain their ground at all in other and more distant markets without actual and serious loss.

If a more precise demonstration of this result is required, the following facts and figures are stated:

In 1866, the cost of producing a barrel of boiled salt at the works was $1.85; of solar salt, $1.55.

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The quantity of boiled salt being about 5,000,000 of bushels, and of solar about 2,000,000; the average cost at the works was, therefore, $1.77. The cost of transporting salt during the year to the ports of Lakes Erie, St. Clair and Michigan, and cost of agencies in those ports, in storing, handling and selling salt, was thirty-eight cents per bushel. To this must be added the interest on $1,250,000, cash capital constantly used in the producing and transporting the salt, amounting to six (6) cents per barrel. These items make a total cost of the Onondaga salt in the western markets of $2.21 per barrel. Now, the evidence shows that the average highest price at which Onondaga salt could be sold during the year at Chicago, the greatest of all our western markets, was only $2.25 per barrel, and that in all the markets on Lakes Erie and Michigan, the salt from Saginaw, in the State of Michigan, was selling at from five cents to ten cents per barrel cheaper. It is seen at a glance that no appreciable profit in these markets was left for the Onondaga manufacturer. Against the keen and active competition with the Saginaw salt, on the upper Mississippi it was and generally is a question of selling at these reduced prices or of abandoning the market. So far, however, it has been the settled policy, not less than the interest of the manufacturers, to maintain their ground in these markets as far as possible, because, in the vicissitudes of trade, higher and better prices sometimes occur. During the same year of 1866, the sales in the city of New York, as already stated, resulted in actual loss, it being proved that such sales netted at Syracuse only $1.60 to $1.75 per barrel, which is less than the cost of production at the springs.

The close and active competition disclosed by these statements in what may be called our exterior markets, including the most populous portion of our own State, must always continue. While the salt markets of the West are gradually extending with the increasing population, the salines of that region, and especially those of Saginaw, are annually rising in importance. The importation of cheap salt from foreign countries will always continue. There is no reason, therefore, for supposing that the salt of the Onondaga springs will enjoy in the future any greater advantages over other interests competing in the markets of the country than it now does. It must be evident, moreover, that any addition to the cost which will overcome entirely the narrow margin of profit which the manufacturer can now realize in the contested markets, would compel him either to withdraw from such markets or to charge the increased cost upon the consumers in this State who have no other sources of supply. This inevitable condition of the trade presents, therefore, first, the question, shall the salt of this State be sent as heretofore to buyers and consumers in other States, and the duty upon it imposed for revenue be paid by consumers at home? As this is clearly inadmissible, then, second, shall the production be reduced to one-half or one-third of its present amount? The only other solution rendered possible by the situation is not to impose the tax at all.

And to that conclusion the undersigned comes without hesitation. It is a conclusion fortified by other considerations, upon which there is no time to dwell at large. For example, the tolls upon the canals of this State annually paid by the Onondaga salt are about $100,000, and to this must be added the tolls upon 100,000 to 150,000 tons of coal annually transported upon the canals to the salt works and used for fuel in the manufacture. As almost the entire production of salt, as well as all the coal so used, is moved by the canal, the one from and the other to the works, the more the manufacture is depressed and reduced the more the State suffers in its canal revenues. And there are also important industrial interests involved in the question. A very large capital is invested, and hundreds of men are employed in the production and preparation of fuel. The actual manufacture of salt employs an immense industry. One million four hundred thousand barrels and bags are required as packages, giving employment to great numbers of persons in the manufacture of these articles. The articles of salt and coal furnish to our canals annually nearly 400,000 tons of freight, employing a great number of boats and greater numbers of boatmen. A large amount of shipping upon the lakes on our border is freighted with salt for the Western States. All these interests must be directly and injuriously affected by any policy which depresses and reduces the production and sale of our salt. But as all industrial pursuits have mutual and dependent relations, there are many trades and occupations to be more remotely and indirectly affected by such a policy. The great interest of agriculture is deeply concerned, for that interest demands the article of salt at the cheapest attainable rate. The undersigned is not able even to say with certainty that the direct revenues of the State would be increased by the tax or duty in question. He repeats, you cannot impose a new burden of any amount without increasing the cost and contracting the area of the markets; what is gained in the amount of tax on the bushel may be wholly lost in the diminished number of bushels produced and sold. That the revenues would not be increased is a result of which there can be little doubt when we take into consideration, also, the diminution of canal tolls upon coal and salt, certain to result from the contraction and depression of the salt manufacture. The undersigned, therefore, believing that in all points of view it is impolitic and unwise to look to this source for public revenue, that it never can be politic or wise so to do; believing also that the subject should be at rest from periodical and unwholesome agitation in the Legislature or elsewhere, recommends that the following provision be inserted in the Constitution, viz.: "The Legislature may appropriate moneys for the development of the salt springs of this State, and to pay the expenses of the care and management of said springs, of the property of the State connected therewith, and of the inspection of salt; but all moneys so expended shall be reimbursed to the treasury as soon as practicable, by a duty on salt. No other or further duty on salt shall be imposed."

GEO. F. COMSTOCK.

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I concur in the foregoing report as to the impolicy of imposing by constitutional provision an additional tax or duty on salt, believing that the subject belongs to the Legislature. I also concur in the report made by the chairman of the committee so far as the same recommends a removal of the existing restraint upon the sale of the salt springs and reservation.

SOLOMON G. YOUNG.

The report was referred to the Committee of the Whole, and ordered to be printed.

Mr. VAN CAMPEN offered the following resolution:

Resolved, That when the Convention adjourns to-day it adjourns until Monday evening at seven o'clock.

The question was put on the resolution offered by Mr. Van Campen, and was declared carried.

Mr. BICKFORD offered the following resolution:

WHEREAS, It is now apparent that this Convention will be unable to complete its labors, according to the plan now pursued, before the meeting of the Legislature; and

WHEREAS, It will be inconvenient, and to many of us objectionable, either to continue our labors in Albany during the session of the Legislature, or to remove to any other place, or to adjourn till after the session of the Legislature; and

WHEREAS, We believe that we may soon complete the article on the judiciary; and

WHEREAS, Reports and subjects not yet acted upon are not of pressing importance, mostly treating of matters outside of the present Constitution; and

WHEREAS, We are anxious to bring the session of this Convention to a close, a desire which we believe is shared by the people; therefore

Resolved, That this Convention will on Monday, December 23, 1867, at 9 o'clock, P. M., take a recess until Thursday, January 2, 1868, at 7 o'clock, P. M., and that the Committee on Revision be instructed to make their final report at the time last named; and that on all subjects on which the Convention shall not then have acted the said committee shall incorporate in their report the provisions of the Constitution of 1846, and that this Convention will adjourn *sine die* on Tuesday, January 7, 1868, at 11 o'clock, A. M.

Objection being made to the immediate consideration of the resolution of Mr. Bickford, it was laid on the table under the rule.

Mr. HARDENBURGH offered the following resolution:

Resolved, That five hundred extra copies of the report of the select Committee on Bribery and Corruption be printed for the use of the Convention.

Which was referred to the standing Committee on Printing.

Mr. MAGEE—If I am in order, I wish to offer a proposition to the Convention. I was not present when the subject of taxation was discussed. I have examined it with care—

The PRESIDENT—The gentleman may offer any resolution he has under the head of resolutions.

Mr. MAGEE—I have an amendment to the fifteenth section of the finance report, which I propose to submit.

The PRESIDENT—The resolution may be received at this stage by unanimous consent.

There being no objection, the resolution was received and read by the SECRETARY, as follows:

"Except that the Legislature may from time to time provide for a specific tax of not more than two per centum per annum, upon all incorporated capital, including the associated capital of all special partnerships enjoying special privileges and immunity from general liability, under the laws of this State, the proceeds of such tax to be paid into the State treasury, for the purposes of the State at large. Such tax may be levied upon and collected from the corporations and partnerships themselves, or, *pro rata*, upon the shares or interests therein, against the owners and holders thereof, as the Legislature may direct, and in such manner as they shall provide by law. The payment of such tax shall exempt such corporations and partnerships, and the shareholders and persons having interests therein, to be taxed from any other tax thereon, for any purpose whatever. No taxes shall be levied upon any other property than that above defined, for general State purposes, except in case of war and insurrection."

Mr. MAGEE—I move that the resolution be laid upon the table and be printed.

The question was put on the motion of Mr. Magee, and it was declared carried.

The PRESIDENT—The Convention will now resolve itself into Committee of the Whole on the report of the Committee of the Judiciary.

Mr. COMSTOCK—I should be very willing and glad to go again in Committee of the Whole on the report of the Committee on the Judiciary, if I could see any thing to be gained by it; but I am satisfied we could make no useful progress whatever. No important question can be settled by the number of members present this morning. I therefore renew the motion that the Convention adjourn.

Mr. RATHBUN demanded the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. MAGEE—If permitted, I would like to submit a very few remarks on the amendment I have offered.

The PRESIDENT—The Chair will inform the gentleman from Schuyler [Mr. Magee] that remarks on his proposition are not now in order.

The question was put on the motion of Mr. Comstock, to adjourn, and it resulted in the following vote:

Ayes—Messrs. C. L. Allen, Axtell, Baker, Cassidy, Clarke, Comstock, Corbett, Corning, Ely, Ferry, Fuller, Hale, Hardenburgh, Harris, Houston, Ludington, Magee, Merrill, Merwin, Miller, A. J. Parker, C. E. Parker, Prindle, Prosser, Rathbun, Rogers, Roy, Spencer, Van Campen —29.

Noes—Messrs. A. F. Allen, N. M. Allen, Alvord, Barker, Beckwith, Bell, Bickford, Bowen, E. A. Brown, Case, Cooke, Endress, Fowler, Francis, Gould, Graves, Hammond, Hand, Hitchcock, Ketcham, Kinney, Krum, M. H. Lawrence,

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Lee, Merritt, Potter, President, Reynolds, Seaver, Smith, S. Townsend, Wakeman, Wales, Williams —34.

The PRESIDENT—It is apparent that there is no quorum present, and in the absence of a call of the Convention the Chair has no alternative but to adjourn the Convention. This Convention stands adjourned until Monday evening next at seven o'clock.

So the Convention adjourned.

MONDAY, December 16, 1867.

The Convention met at seven P. M., pursuant to adjournment.

Prayer was offered by Rev. BERNARD McMANUS.

The Journal of Saturday was read by the SECRETARY and approved.

Mr. GOULD—Mr. Reynolds, of Monroe, has received a telegram announcing the very dangerous illness of his father; and I move that he be granted indefinite leave of absence.

There being no objection, leave was granted.

Mr. GOULD—I am cited to attend at the surrogate's court on Tuesday and Wednesday of this week. I therefore ask leave of absence for myself for that purpose.

There being no objection, leave was granted.

Mr. HATCH—I have a resolution which I desire to offer; and I will say, in explanation of my offering it at this time, that it is a resolution instructing the Committee on Revision to add the financial section stated in it, which I omitted to present when the Committee of the Whole had the subject-matter of the finances in charge, for the reason that there was a very thin attendance, and also for the excellent reason that, from the manifestations of the disposition of the committee, I was satisfied there was a majority present that would not regard it favorably. I propose now to reach it in this form and to have the resolution lie upon the table so that I can call it up when that order of business is reached, and when there is a fuller attendance. If there ever is a fuller attendance here, I shall call it up and present some considerations why I think it should be adopted by the Convention and placed in the organic law of the State—fixing and declaring a State policy hereafter toward our canal system:

Resolved, That the Committee on Revision be instructed to add the following to the article upon finances:

"After the payment of all the debts for which the canal revenues are now pledged, and after all advances with interest thereon heretofore or hereafter made for canal purposes shall be repaid, no more or greater tolls shall ever thereafter be imposed, charged or levied upon property transported on the canals, than shall be sufficient for ordinary repairs and further necessary improvement."

I will simply add, sir, if there is no objection to it, that this financial section has received the approval of two-thirds of the Finance Committee.

The resolution was laid on the table under the rule.

Mr. ALVORD—It is evident that there is not a quorum here, and I move a call of the roll.

The SECRETARY called the list of delegates, when the following members answered to their names:

Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Axtell, Baker, Barker, Beals, Bell, E. A. Brown, Case, Comstock, Cooke, Corning, Curtis, Daly, C. C. Dwight, Ely, Endress, Farnum, Ferry, Fowler, Fuller, Gould, Graves, Hadley, Hale, Hand, Hardenburgh, Hatch, Hitchcock, Houston, Ketcham, Kinney, M. H. Lawrence, Lee, Ludington, Magee, Mattice, Merrill, Merritt, Merwin, Miller, C. E. Parker, Potter, President, Prindle, Rathbun, Seaver, Smith, Spencer, M. I. Townsend, S. Townsend, Van Campen, Wakeman, Wales, Williams, Young—58.

The PRESIDENT—There is no quorum present.

Mr. HARDENBURGH—I move that the Convention adjourn.

The question was put on the motion of Mr. Hardenburgh, and it was declared carried.

So the Convention adjourned.

TUESDAY, December 17, 1867.

The Convention met at ten A. M. pursuant to adjournment.

Prayer was offered by the Rev. BERNARD McMANUS.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. BEADLE presented a remonstrance of the citizens of Elmira against the abolition of the Board of Regents.

Which was referred to the Committee of the Whole.

Mr. M. I. TOWNSEND—I ask for the consideration of the resolution offered by me on Friday.

The SECRETARY read the resolution as follows:

WHEREAS, Any provision which can be adopted by this Convention for the suppression of bribery and corruption in legislative and State offices, if accepted by the people of the State, cannot take effect for a long time yet to come; and

WHEREAS, The offenses referred to are now so frequent as to produce alarm in the minds of all good citizens; and

WHEREAS, Except in rare instances there have been no adequate attempts to ferret out or punish offenders of this character; and

WHEREAS, The punishment of such offenses is a matter in which every portion of the State is equally concerned; therefore

Resolved, That the Legislature be and they are hereby respectfully requested to pass such needful and proper laws as shall provide for the payment by the State of all such necessary expenses as shall be incurred by any county in prosecutions for such offenses, and as shall secure the efficient aid of prosecuting officers in ferreting out and punishing the guilty.

Mr. M. I. TOWNSEND—I desire the consideration of this resolution now, without any reference whatever to the measures which the Convention may eventually see fit to adopt for the suppression of the evils to which the resolution relates. The resolution is offered simply for the purpose of covering the time that must necessarily elapse

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between the present moment and that when any constitutional provision which the Convention may recommend to the people can take effect. For the purpose of determining whether any action upon this subject is proper, I deem it becoming to state, that the recommendation of the resolution is not a new act on the part of this Convention. We have conferred with other bodies and other officers in regard to matters of this character. We have called upon the committee of the Senate engaged in the investigation of canal frauds, and have received communications from them. We have recommended action to the Attorney-General that he should institute legal proceedings for the vacating of contracts which have clearly obtained by fraud; so that the measure which I now propose is entirely consistent with the previous action of this Convention. A more important question, as I deem it, is this: Is there any reasonable prospect that it is practicable under the laws as they now exist, and under the Constitution as it now exists, for the Legislature to set machinery in motion by which this gigantic evil can be checked? And for the purpose of determining this question I propose to review briefly the legislation which has been had upon this subject, and the decisions of the courts in reference to the effect and constitutionality of that legislation. By the Revised Statutes as originally enacted, chapter 1, part 4, article 3, title 4, section 9, all acts of bribery and attempting to bribe the Governor, the State officers, members of the Legislatures, etc., were made penal offenses, and the persons committing these offenses were subjected to imprisonment in the State prison for a period not exceeding ten years, or to a fine not exceeding five thousand dollars, or both, in the discretion of the court. By the tenth section, the accepting of a bribe, on the part of any of these officers, was punished with a like penalty and with a forfeiture of office. By the eleventh section, persons drawn as jurors were liable to punishment for accepting bribes, by imprisonment for a term not exceeding five years, or to the payment of a fine not exceeding a thousand dollars, or to both these penalties, in the discretion of the court; and it was further provided, that any person who attempted to corrupt a juror should be subjected to the same punishment as the juror himself was subjected to when guilty of this offense. But there were found to be difficulties in the enforcement of these provisions of the Revised Statutes, and in 1853 the breadth of our legislation upon this subject was increased; and it is rather to the present condition of the law, as established by the Laws of 1853, that I wish to call the attention of the Convention, than to the original condition in the Revised Statutes. By chapter 539 of the Laws of 1853, page 1011, the original legislation against attempts to bribe, and against those who actually bribe public officers, was somewhat extended, but the penalties were left the same. By the tenth section, the description of the punishment, or rather of the offense of a State officer or member of the Legislature who should accept a bribe, was somewhat more extended, but the offense was punished with the same penalties. The punishment for jurors who were guilty of receiving bribes and of persons who attempt to corrupt jurors was left the same, but there was an additional provision adopted, that any person engaged directly or indirectly in the business of influencing the action of public officers from corrupt motives, should come within the provisions of the statute. In the thirteenth section of that act, it is enacted that "every person who shall knowingly bear or convey any such gift, gratuity or proposal, or shall in any manner negotiate between any other persons for any violation of either of the provisions of the preceding sections of this article shall, upon conviction be punished in the same manner as persons receiving bribes, except the forfeiture of office." So that if the law of 1853 can be enforced, or if an attempt were fairly made to enforce it, this whole business of spending winters at the capital for the purpose of bribing your legislators and State officers to violate their duty and to trifle with and pervert the interests of the people, might be swept away under the statute, as it is, without any additional enactments. For the purpose of making this statute effectual the Legislature added the fourteenth section, which provides that "every person offending against either of the provisions of the preceding sections of this article shall be a competent witness against any other person so offending, and may be compelled to appear and give evidence before any magistrate or grand jury, or in any court in the same manner as other persons; but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying." It is further provided in the fifteenth section that a person, who shall refuse to testify, shall be liable to prosecution for such refusal, and shall be liable to be punished by the court as for a contempt of court, and by imprisonment during the pleasure of the court and until he shall consent to testify; and further, that if a person thus liable to testify shall be called upon and brought into court upon the trial of an indictment, and shall refuse to testify upon that trial, the person accused shall not therefore go unwhipt of justice, but that the court shall have the right to withdraw a juror and suffer the trial to go over until the time shall arrive when such person shall consent to testify and relieve himself of imprisonment. Such are the provisions of the law as they stood in 1853, and as they stand upon the statute book to day. But it may well be said that, if these provisions of the law are thus stringent, it is useless to ask the Legislature to take action, provided that the legislation of 1853 is in violation of the Constitution of this State, or in violation of the Constitution of the United States, or so in conflict with the common law of the country that it cannot be enforced. The question of the validity of that legislation is a pertinent one, and if these provisions of the Laws of 1853 cannot be enforced, it would be idle for this Convention to pass the resolution now under consideration, and it would be the duty of the Convention, if it saw any other short road of reaching an evil of this great magnitude, to adopt that road rather than this. But fortunately we are not left to conjecture upon the subject of the constitutionality of this

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legislation. We have the unanimous decision of our court of appeals, made at the time when the gentleman from Onondaga [Mr. Comstock] was president of the court, and when the opinion of the court was given by that eminent jurist, Judge Denio. It was in the case of The People *v.* Hackley (24 New York Reports, 74). In 1857 the provisions of this law of 1853, in regard to the bribery of State officers, were extended and made applicable to the authorities of the city of New York, and by the law of that year it was made a similar offense to bribe or attempt to bribe any officer in the city of New York engaged in a public capacity, and the same provision was made in regard to the right to call witnesses, and the same duty and the same penalties were imposed upon recusant witnesses in such cases as in cases of bribery of State officers. The case of Hackley was one of those strange cases in the history of this State where an attempt was made to enforce the laws as they existed against bribery and corruption. Andrew J. Hackley was called before the grand jury in the city of New York and sworn as a witness; and I confess to a little desire that my colleagues in this Convention should do me the personal favor of noticing precisely how this law was interpreted by the courts, because, for reasons that will be understood by the Convention, I am somewhat solicitous that we should all understand precisely the present state of the law. This question was put to Hackley: "What did you do with the pile of bills received from Thomas Hope, and which he told you amounted to fifty thousand dollars?" and the said Andrew J. Hackley, then and there, instead of answering the said interrogatory, stated as follows, to wit: "Any answer which I could give to that question would disgrace me, and would have a tendency to accuse me of a crime. I therefore demur to the question, referring to the ancient common law rule that no man is held to accuse himself, and to the sixth section of the first article of the Constitution of this State." Now, that section of the Constitution is that, "no person shall be compelled in any criminal case to be a witness against himself," and that is precisely the same form of words that exists in the Constitution of the United States. This man Hackley put himself upon three grounds, first, that it would disgrace him, and that, therefore, he was exempt from answering; second, that it would render him liable to be brought into like peril with the person then accused, and therefore that he was not obliged to answer; and, third, that he was protected under the Constitution of the State. And is there any other reason conceivable, why a witness should refuse to answer a question pertinent to the matter under investigation, and fairly put to him when he was sworn as a witness to tell the whole truth, except these three reasons given by Hackley? And if the court of last resort in this State has decided that it was constitutional to compel a witness to answer, under such circumstances, is there then any constitutional difficulty in the way of enforcing the law as it now exists? This case is found in 24th New York Reports, page 74. Beginning at page 80, Judge Denio says:

"The bribery act of 1853 declares the giving to or receiving money, etc., by any of divers public officers named, including any member of a common council of a city, with a view to influence their action upon any matter which may come officially before them, an offense punishable by fine and imprisonment in a State prison. For the purpose of enabling the public to avail itself of the testimony of a participator in the offense, the fourteenth section provides as follows: 'Every person offending against either of the preceding sections of this article shall be a competent witness against any other person so offending, and may be compelled to appear and give evidence before any magistrate or grand jury, or in any court in the the same manner as other persons; but the testimony so given shall not be used in any prosecution or proceeding, civil or criminal, against the person so testifying.' [Ch. 539.] A similar provision is found in an act to amend the charter of the city of New York, passed in 1857. The fifty-second section relates to bribes of the members of the common council and the officers of the corporation, making the giving and the receiving of bribes highly criminal, and concluding with an enactment substantially similar to the fourteenth section of the act of 1853. The design was to enable either party concerned in the commission of an offense against the act, to be examined as a witness by the grand jury or public officer intrusted with the prosecution. The question to be determined is, whether these provisions are consistent with the true sense of the constitutional declaration that no person shall be compelled in any criminal case to be a witness against himself. (Art. 1, § 6). The primary and most obvious sense of the mandate is that a person prosecuted for a crime shall not be compelled to give evidence on behalf of the prosecution against himself in that case. It is argued that no such narrow and verbal construction could have been in the view of the authors of the article, for the reason that no such atrocious procedure as that supposed has been tolerated in civilized countries in modern times. But constitutional provisions are not leveled solely at the evils most current at the times in which they are adopted, but, while embracing these, they look to the history of the abuses of political society in times past, and in other countries, and endeavor to form a system which shall protect the members of the State against those acts of oppression and mis-government which unrestrained political or judicial power are always and everywhere most apt to fall into. (See the observations of Chief Justice Spencer on this subject, reported in 18 Johns., 202.) The history of England in early periods furnishes abundant instances of unjustifiable and cruel methods of extorting confessions, and the practice at this day in the criminal tribunals, in the most polished countries in continental Europe, is to subject an accused person to a course of interrogatories which would be quite revolting to a mind accustomed only to the more humane system of English and American criminal law. It was not, therefore, unreasonable to guard by constitutional sanctions against a repetition of such practices in this State: and it is not at all improbable that the true intention of the provision in ques-

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tion corresponds with the natural construction of the language. But there is great force in the argument that constitutional provisions devised against governmental oppression, and especially against such as may be exercised under pretense of judicial power, ought to be construed with the utmost liberality, and to be extended so as to accomplish the full object which the author apparently had in view, so far as it can be done consistently with any fair interpretation of the language employed. The mandate that an accused person should not be compelled to give evidence against himself would fail to secure the whole object intended if a prosecutor might call an accomplice or confederate in a criminal offense, and afterward use the evidence he might give to procure a conviction on the trial of an indictment against him. If obliged to testify on the trial of the co-offender to matters which would show his own complicity, it might be said, upon a very liberal construction of the language, that he was compelled to give evidence against himself; that is, to give evidence which might be used in a criminal case against himself. It is perfectly well settled that where there is no legal provision to protect the witness against the reading of the testimony on his own trial, he cannot be compelled to answer. (The People v. Mather, 4 Wend., 229, and cases there referred to.) This course of adjudication does not result from any judicial construction of the Constitution, but is a branch of the common law doctrine, which excuses a person from giving testimony which will tend to disgrace him, to charge him with a penalty or forfeiture, or to convict him of a crime. It is, of course, competent for the Legislature to change any doctrine of the common law, but I think they could not compel a witness to testify on the trial of another person to facts which would prove himself guilty of a crime without indemnifying him against the consequences, because, I think, as has been mentioned, that by a legal construction, the Constitution would be found to forbid it. But it is proposed by the appellant's counsel to push the construction of the Constitution a step further. A person is not only not compellable to be a witness against himself in his own cause, or to testify to the truth in a prosecution against another person where the evidence given if used as his admission, might tend to convict himself if he should be afterward prosecuted, but he is still privileged from answering, though he is secured against his answers being repeated to his prejudice on another trial against himself. It is no doubt true that a precise account of the circumstances of a given crime would afford a prosecutor some facilities for fastening the guilt upon the actual offender, though he were not permitted to prove such account upon the trial. The possession of the circumstances might point out to him sources of evidence which he would otherwise be ignorant of, and in this way the witness might be prejudiced. But neither the law nor the Constitution is so sedulous to screen the guilty as the argument supposes. If a man cannot give evidence upon the trial of another person without disclosing circumstances which will make his own guilt apparent, or at least capable of proof, though his account of the transaction should never be used as evidence, it is the misfortune of his condition and not any want of humanity in the law. If a witness objects to a question on the ground that an answer would criminate himself, he must allege, in substance, that his answer, if repeated as his admission on his own trial, would tend to prove him guilty of a criminal offense. If the case is so situated that a repetition of it on a prosecution against him is impossible, as where it is forbidden by a positive statute, I have seen no authority which holds or intimates that the witness is privileged. It is not within any reasonable construction of the language of the constitutional provision."

I need not read further; suffice it to say that, when this man Hackley was required by the grand jury to answer the question as to what he did with the money which it was alleged was to be used to bribe an officer of the city government, and when he refused to answer it, the court committed him for contempt; and when it finally came before the court of appeals, it was decided, with the concurrence of every member of that court, Judge Denio giving the opinion, and Judge Comstock presiding at the hearing, that he was obliged to answer: so that, whatever we may have after the Convention shall have taken such action as it deems proper upon this subject, we have now, in the State of New York, a system of penalties for the punishment of bribery and corruption, both on the part of officers who receive and those who offer or give the bribe, astonishingly minute, and to a great degree adequately severe, so that every creature connected with the commission of this crime against God, man, and society, could be compelled to answer as a witness in any such investigation. Now, will it do for this Convention to say that we will not do what in us lies, to provide for the punishment of such offenses during the period which must intervene between this time and the time when our Constitution shall be adopted by the people and shall take effect? I weighed well the consequences of offering this proposition. I know that so long as we talk here against this corruption, and talk wisely and properly in denunciatory strains, taking no action, the whole foul brood of ill-omened birds, whether in the city or elsewhere, would sit quietly and approve; but I knew, too, sir, that the moment a movement on my part was made, to cause some action to be taken for the prevention and punishment of offenses of this character, it would draw upon me the wrath of that ill-omened and foul brood of unclean birds that annually haunt the halls of this capitol, and pollute with their noisome breath the very atmosphere in which we are now living and moving. I knew that every press that could be brought into the service of the lobby would ring with denunciations of any one who should dare to take any action in this matter calculated to interfere with their foul trade; but you, Mr. President, imposed upon me the duty of sitting upon a committee for ascertaining not only what the laws should be and what the Constitution should be, but also the somewhat unusual duty of finding out what the law is; and I felt that under my oath I could not sit here and refuse to

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take such action as could be taken for the temporary suppression of this offense until the final action of this Convention (whatever it may be) could be brought to bear for the protection and the well being of the State. Why, sir, what is the state of opinion that exists? The report of the majority of the committee shows that a single institution last winter paid $205,000 in bribes to the Legislature, and enough was ascertained by that committee to show that at least half a million dollars of ready money was disbursed here at that time, and is disbursed here every year in corrupting the servants of the people, sent here by them to legislate for their interests. Is this an evil of moderate magnitude? Why, sir, take another phase of this matter. In view of the law of 1853, what is to prevent the indictment of the treasurer of the New York Central railroad? and if he has sworn to the truth that the president of that road took the money from him and sent it to the Delavan House to be used in corrupting the Legislature, what is to prevent the president of that road from being consigned to a felon's cell for ten years? These, sir, are the practices now common in this State; and these things are practiced by some of the richest, most honored and most eminent persons in the State. But, sir, if the laws were enforced, these persons would be brought to punishment, and every officer of the Central railroad, every messenger engaged in carrying those packages of bills up to the Delavan Hotel for distribution there, with a view of their eventually reaching the Legislature, is liable to ten years' imprisonment in the State prison under the law! Yet nothing is done. Sir, we might talk about this matter till we die; we may study to find striking phrases in which to denounce it until they are turned so finely and beautifully that they would astonish the ancient orators; but our talk will have no effect. We must *do* something. Now, what is the reason why official corruption has not been punished? Sir, I say, without fear of contradiction, that, it is because it has not been prosecuted. And if it shall not be punished for the time to come, it will be because it will not be prosecuted. I undertake to say that the services of an honest lawyer, if such a man can be found, and of one detective of ordinary intelligence, would secure the discovery and punishment of fifty individuals for bribery committed during the last year; and in this statement I shall be borne out by all gentlemen here who know any thing about criminal proceedings. Now, should we not take some means by which to secure the prosecution of these criminals? See what is coming? Already we begin to see these foul creatures gathering here for the next session of the Legislature. Already the birds are flapping their wings in the breeze, and that is one reason why a great many of our members desire to go away from this city. They are not afraid of the men who are inside of the Legislature, because the great body of the legislators who come here are, when they first come, honest men; but it is well understood that we have a corps of these creatures who have been for the last twenty or thirty years hangers-on about these halls, and who stand here always ready to train young novitiates in the ways of crime. They seize upon a young member from the country, who comes here with his pockets bare, and with nothing but his virtue. They teach him first where to play whist; they teach him where the best whisky can be had; they take him to theatrical entertainments, and then, if he is found to exhibit a taste for it, they take him to where he can see the elephant. [Laughter.] And then, perhaps, they begin to show him the other mysteries of the picture. For one, sir, I confess that I cannot sit still and permit these men to go unwhipped of justice, when our statute books are full of provisions for their detection and punishment, and when the only obstacle in the way is the want of vigorous prosecutions. Many of these men have been presented before the grand jury of Albany. Some of them have been presented before the grand jury of my own county. One man is elected to sit in this hall in the Assembly who was once indicted by the grand jury of my county for the giving of bribes, but the district attorney of that county entered a *nolle prosequi* and the district attorneys of other counties in which indictments were found have entered a *nolle prosequi*; although, as I have said, it is an exceedingly rare thing to find these criminals indicted at all. Now, we may say that grand juries should be very virtuous, and that when a case of this character is presented before them, they ought to indict without reference to any other consideration but their oaths. But a grand juror, when he sits in yonder hall in this county, knows that, if he finds a bill of indictment in such a case, it will probably entail an expense of five thousand, ten thousand, or even twenty thousand dollars, which must be paid by the county of Albany, because there is no provision for the payment fo such expenses by the State. A man comes here from some distant county—perhaps, for instance, from Chautauqua [laughter]—and he bribes a State officer, or attempts to bribe some State officer, and is presented therefor before the grand jury of this county for indictment. Each member of that grand jury, being but human, and perhaps not as conscientious as he would be if he sat in a body like this, says to himself, "This is simply a call upon us to incur expenses which I and my children and my neighbors will have to pay for the benefit of the county of Chautauqua. We will not present this; we will wait rather than load down this county with the expense." Now, for myself, I deem it unwise to present the matter in that shape to the grand jurors of the county of Albany. This State can better afford to expend a large sum of money every year for the punishment of offenses of this character than to have them continue. If they are not stopped, sir, where is to be the end? The report of the majority shows that a railway company in the city of New York appropriated a hundred thousand dollars of its stock to be distributed among members of the Legislature if a certain bill should pass. On another occasion, a company appropriated sixty thousand dollars to bribe members of the Legislature, and on another occasion twenty thousand dollars were appropriated for the same purpose; and above all we have the case of the New York Central railroad company, an institution suffering, almost dying and going out of existence

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from the hardships imposed upon it, expending the sum of two hundred and five thousand dollars within eight months past for the purpose of bribing its schemes through the Legislature. It does seem to me that the Legislature ought to provide for the payment of the expenses of these prosecutions. I have not suggested in this resolution that provision should be made for the payment of district attorneys, but propose to say that there ought to be adopted by the Legislature such provisions as in their wisdom the exigencies of the case demand to compel district attorneys to prosecute these offenses. And allow me to say here, for I deem it due to the subject, that the district attorney must look up these offenses if they are ever to be punished. It is very rare indeed to find a man that will do as the man Willson has done, who stands out as a phœnix—one in a century. A man who will go to the Legislature and do all he can to corrupt them, and then turn around and voluntarily complain of those that he has sought to seduce, is indeed a *rara avis*. The prosecuting officers of this State must become detective officers and seek out the perpetrators of these crimes. They have got to develop them upon their own motion or they never will be developed or punished at all. But it may be said that the Legislature has already got so corrupt that there is no use in asking them to do any thing. Sir, I do not believe it. I believe that there is an immense amount of corruption practiced by those who are elected to the Assembly and to the Senate, but I do not believe that it has often, if it has ever occurred, that a majority of either of those bodies have knowingly fallen into the hands of the corruptionists. At all events, I hope better things from the Legislature now elected. We have in this body three members of the lower house and three members of the upper house, and we can certainly rely upon a good report from these gentlemen in the next Legislature. If this amendment which I now propose is wise in its scope, I hope the Convention will adopt it without in any respect prejudging what it will be wise or proper for us to do in modeling the Constitution to meet this same evil, when we come to that. I have designed this resolution simply as a temporary measure, and it is drawn so as to commit us to nothing but to a temporary remedy for the state of things now existing until our Constitution can be adopted by the people and can take effect; and I hope that now during this intervening period that something will be done to make us feel that while we sleep in our beds, the property, the safety and the liberties of the people of this State are not being bought and sold by a corrupt brood of lobbyists, or by interested and corrupt corporations.

Mr. OPDYKE—I am opposed to the adoption of this resolution on various grounds, only one of which I will now refer to. The resolution in effect asks this Convention to say to the Legislature, "We regard your body as corrupt, but from a want of means or want of willingness to pay the costs of prosecutions, we have hitherto been unable to convict and punish you; and we therefore petition you to provide the means by which that can be done." Now, sir, I hold that such action as this would place this Convention in a most undignified position, and it would, at the same time, be highly disrespectful to the Legislature. If we do any thing of this kind it should be in the form of a direction to the Legislature. But, sir, I object to the consideration of the resolution at the present time because I regard it as disrespectful to this body. Early in its session, this Convention appointed a committee to consider and report upon the whole subject to which this resolution relates. That committee has considered the subject, and has reported to the Convention. Its report is upon our files, and has been referred to the Committee of the Whole for consideration. I therefore object to this resolution, in the second place, because it is disrespectful to that committee, of which the mover of this resolution is a member. As a member of that committee, the gentleman [Mr. M. I. Townsend] has made a minority report, which is almost identical in purport with the resolution which he now presents. I should move to refer this resolution to the Committee of the Whole, which shall be charged with the consideration of these reports, were it not that it is almost identical in purpose with the minority report presented by the mover of this resolution. It therefore seems unnecessary that it should go to that committee at all, because, in substance, it is already upon our files in that minority report, and in that form will receive consideration at the proper time. I hold it is due to this Convention, and to the committee referred to, that the whole subject shall remain untouched until those reports come up for consideration; and with these views, I move that the resolution lie on the table.

The question was put on the motion of Mr. Opdyke, to lay the resolution of Mr. M. I. Townsend on the table, and, on a division, there were ayes 41, noes 25—no quorum voting.

Mr. M. I. TOWNSEND—I call for the ayes and noes.

A sufficient number seconding the call the ayes and noes were ordered, and the motion to lay the resolution on the table was declared carried by the following vote:

Ayes—Messrs. C. L. Allen, N. M. Allen, Andrews, Baker, Barto, Beadle, Beals, Bell, Bergen, Bowen, E. A. Brown, Case, Cassidy Chesebro, Cooke, Daly, C. C. Dwight, Eddy, Endress, Ferry, Flagler, Fuller, Garvin, Graves, Gross, Hale, Hardenburgh, Hatch, Houston, Hutchins, Ketcham, Lee, Ludington, Magee, Merrill, Merwin, Miller, Monell, Nelson, Opdyke, Potter, Prosser, Rathbun, Roy, Spencer, Van Campen, Wales, Williams—48.

Noes—Messrs. A. F. Allen, Alvord, Armstrong, Axtell, Barker, Bickford, Cheritree, Comstock, Ely, Farnum, Field, Folger, Fowler, Francis, Goodrich, Hadley, Hammond, Hand, Harris, Hitchcock, Kinney, A. Lawrence, M. H. Lawrence, Mattice, McDonald, Merritt, A. J. Parker, C. E. Parker, Pond, President, Prindle, Seaver, Smith, M. I. Townsend, S. Townsend, Wakeman, Young—37.

The Convention again resolved itself into Committee of the Whole upon the report of the Committee on the Judiciary, Mr. C. C. DWIGHT, of Cayuga, in the chair.

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The CHAIRMAN announced the pending question to be on the motion to reconsider the vote by which the amendment of Mr. E. A. Brown, striking out the word "department" in the second line of the sixteenth section, and inserting "districts" in lieu thereof, was rejected.

Mr. A. J. PARKER—I hope this motion will be carried, and that we shall adopt the amendment proposed by the gentleman from Lewis [Mr. E. A. Brown]. The motion which it is proposed to reconsider, proposes that the judges of the supreme court shall hereafter be elected by districts as they are under the present Constitution, subject, of course, to such changes as the Legislature may make. Unless this motion prevails they will be elected by departments, the State being divided into four departments. For myself, I have not favored the idea of dividing the State into departments. The great object proposed to be accomplished by that division was to render the supreme court in its decisions more nearly a unit; in other words to have four general terms of the supreme court instead of eight. Certainly so far as the holding of general terms by departments instead of districts is concerned, some good will be accomplished, but after all it will fall very far short of making the supreme court a unit. It only provides four general terms instead of eight. Under the present system there are eleven general terms, from which appeals are had to the court of appeals; and this reduces the number to seven. I include, of course, in the eleven the superior court of New York and the superior court of Buffalo and the common pleas of New York. It accomplishes perhaps a little good, although I confess I do not appreciate it as highly as many others in this committee. But I am willing to let it stand. It is in the report and it has not been changed. The amendment proposed by the gentleman from Lewis [Mr. E. A. Brown], does not provide any change at all; it proposes to organize general terms by departments, and if any thing is to be gained by having a lesser number we shall have the benefit of it; but it proposes to elect all the judges by districts as we do now. Let us look for a moment at that single proposition, for that is all that is proposed by the gentleman from Lewis. It leaves us all the advantages of holding courts by departments, if we choose so to consider it. My objection to this system of electing by departments is that it is partisan in its results—I will not say in its motives. I should be exceedingly unwilling to attribute to any gentleman in this Convention, either of the majority or of the minority, a partisan object in any amendment which is proposed. I do nothing of the kind. But its effect and its result is to operate with a partisan influence and a partisan benefit as regards the first, second and third districts, because in those districts alone as the supreme court is now constituted, can democrats be elected to the bench. Now it oporates against the third district for it necessarily puts it with another district which changes entirely its political character. In regard to the first district, it brings in such outside territory as the Legislature may think proper to select, which will control the whole of the people in the first district. They can no longer elect their own judges as they have done. They must elect in conjunction with such other counties as it may please the Legislature at any future day in the next twenty years to put with them. In regard to the second district, I am told that the plan will meet with the opposition of both political parties; that they prefer to stand by themselves and not be connected with the city of New York or any other territory in the election of their judges. I hope that the plan proposed by the gentleman from Lewis [Mr. E. A. Brown] might meet with the cordial support of every delegate in this Convention from the first, second and third districts, and I should hope that it might meet with the support equally cordial from every other gentleman from other parts of the State, though he may belong to the opposite political party, if he desires to see this plan on the judiciary fairly organized. I have been willing myself to change the plan of electing judges from the small to larger departments, provided it could be organized with fairness, which alone would make it acceptable to the people, and should advocate minority representation because that would have operated with equal fairness in every part of this State, but that plan has been voted down as not in accordance with the sense of the Convention. I hope, therefore, for the purpose of making this article acceptable to the people everywhere, for the purpose of being sure there shall be no political feeling on one side or the other in regard to this Constitution, we may continue to elect our judges by districts as heretofore.

The question was put on the motion to reconsider, and, on a division, it was declared carried by a vote of 45 to 10.

A DELEGATE—There is no quorum voting.

The CHAIRMAN—There was a quorum in Convention a while ago; the gentlemen will please vote.

The question was again put, and, on a division, it was declared carried, by a vote of 50 to 31.

The question was then put on the first branch of the proposition of Mr. E. A. Brown, to strike out the word "departments," in the second line, and insert the word "districts," and it was declared adopted.

The question recurred on the second branch of the amendment, which was read as follows:

"The justices of the supreme court, elected under this Constitution, shall hold their offices for eight years; the judges of the superior court of the city of New York shall hold their offices for six years; and the judges of the court of common pleas, elected under this Constitution, shall be so classified that, with those then in office, two shall go out of office at the end of every two years, and after such classification the term of office of said judges shall be six years, and the term of office of the judges of the superior court of the city of Buffalo shall be six years."

Mr. SMITH—I offer the following as a substitute for the last clause:

The SECRETARY read the substitute as follows:

"Strike out all after the word 'offices,' in line seven, and substitute therefor the words 'for the term of eight years.'"

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The question was put on the amendment of Mr. Smith, and it was declared lost.

The question recurred on the second proposition of the amendment of Mr. E. A. Brown.

Mr. COMSTOCK—I do not see any occasion for classifying the judges in the manner proposed by that amendment—I mean the judges to be elected under the new Constitution. We all know that the terms of the present judges expire at intervals of two years. Every two years one of the existing judges of the supreme court goes out of office, and the vacancy will be filled by a new election under the Constitution we are framing, for such term as we agree upon. It may be eight years, or it may be fourteen years, or it may be sixteen years. When a judge who is now in office leaves his position, I see no objection to electing his successor for whatever term is agreed upon without any classification. If a vacancy shall happen to be filled by a popular election, I see no reason why a popular election of a successor in office shall not be had for a full judicial term as that term may be prescribed by this Constitution. Of course judges will not all come into office and go out of office together; because the judges now in office who are to have their successors elected from time to time, go out at different periods, and there will be no classification necessary. I hope the committee will also consider carefully before we adopt the short term of office. If it is in order, I will move that the term of office be made each fourteen years instead of eight.

Mr. E. A. BROWN—The amendment is doubtless open to the criticism made by the gentleman from Onondaga [Mr. Comstock], to a certain extent at any rate. The purpose of my amendment was to fix the term of office first for the justices of the supreme court. I do not know that it is necessary to incorporate here any thing about classification. In regard to the term of office in the court of common pleas of New York, whatever it may be, it seems to me to be necessary to have a classification unless the three additional judges all go out of office at the same time. If I may be allowed I will change my proposition so that it shall say nothing about classification, and have it read that the term of office of the justices of the supreme court and superior court of the city and county of New York, and the court of common pleas of the city of New York, and the superior court of Buffalo shall be eight years.

Mr. SPENCER—There is no reason that I can see for making a distinction in the terms of office of the judges of the superior court and the court of common pleas of New York, and the justices of the supreme court. I suggest that twelve years will be the multiple of the number of judges in each district of the supreme court, and the term made more uniform by adopting twelve years instead of eight.

Mr. COMSTOCK—I offer my amendment now. I move to strike out after the word judges, the remainder of the section, and insert so that it shall read thus: "said justices and judges elected under this Constitution shall hold their offices for a term of fourteen years."

Mr. GRAVES—I hope this amendment will not succeed. I am clearly of opinion that the people can judge of the qualifications of the persons who are elected to that office by a term of at least eight years. It appears to me to be a very great mistake to lengthen the time for which judges hold their offices. It is simply a question of education so far as it involves the occupation of the office, and the length of time which the incumbent holds it. It is the educating of the public mind to determine his qualifications as a judge. In my opinion it would be unfortunate to have a longer time than eight years. I would even prefer to have it a period of four years, because I think the people can learn the qualifications and capacity of a man in four years, and be able to judge whether he is a fit subject for his position or not. Certainly, if they learn that fact within four years, they should have the power in their own hands of disposing of him, or, in other words, of refusing to re-elect him if he lacks qualifications and capacity. I received, last Saturday, a letter from one of the most eminent lawyers in the western part of the State of New York, informing me that, in his judgment, it would be decidedly against the current of public opinion to fix a long term of office of any one of the judges. Now, sir, I am desirous of having eminent lawyers fill those places, as much so as any delegate here, and my experience shows me, that good and capable men have held those places under our present Constitution. Therefore. I am unwilling that the people should be deprived of the opportunity to judge of the qualifications of their servants, and that this Convention should adopt a rule by which they should determine that the people were better qualified to judge of the capacity of an incumbent at his first election, without knowing any thing about him, than they would be at the end of four years, for that is the effect of it. You give him a nomination for the office of judge of the supreme court He has never held the position, and you know nothing of him except as a lawyer. In that position he has behaved himself exceedingly well, maintained a good moral character, and established his reputation as a good lawyer. He comes before the people as a candidate for judge of the supreme court. We all know that some men are good lawyers who are not fit to be made judges. Men fill the position of judge sometimes much better than they discharge the duty of lawyer. In other words, a man may not be fitted for both positions. One position he can fill with honor to himself; the other only with discredit. Now, while we seek to elect able men and good men to fill these positions, we may be deceived; but if we are deceived then, at the end of four years, the short term, we have the power of choosing better men; but if we are not deceived we can retain the ones we have. I am unwilling to divest the people of the power to judge for themselves. Allow them to retain the right of exercising the knowledge which they have acquired. Is it true, sir, that we are more unqualified to judge of the qualifications of men after we know them than we are when we know nothing of them? Is it true that, after a man has served eight years, and after he has merited re-election and obtained the gene-

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ral approbation of the people, we shall so determine that we will deprive ourselves of the opportunity of re-electing him, or if he is unfit for the position that we shall deny ourselves the privilege of finding and electing a better man as his successor? Let the judgment of the people be exercised as frequently as the public interest demands.

Mr. ALVORD—I hesitate somewhat in entering upon the debate of a matter of this kind; still, it seems to me to be proper that I should express my views in reference to this question at this stage of the discussion. I have listened patiently and have watched carefully the proceedings of this committee from the time it started until the present moment. I have found that, in the first instance, a portion of the gentlemen of the legal profession upon the floor of this house, have carried propositions which have been brought before this committee in a manner very different from what seems to me now to be the disposition on this question. We have, in fact, been working in a circle for the last two weeks upon this question of the judiciary. It strikes me that we should straighten out in some way so that we can possibly, in the course of human events, get through with this subject. I think that I am speaking the truth when I say that the greatest of all matters which called for this Convention at the hands of the people was some reform in the judiciary; that it was found that the system under which we had operated for the last twenty years did not come up to the mark in the estimation of the people and which it was supposed by its original founders it would reach; that there must be a radical reform in this regard. And, sir, I venture to say that I speak understandingly of the people of my own locality when I say they believe that the nearer we approach to a life tenure in this office the further we step in the right direction. Very many of them—I will not undertake to say the majority—are in favor of divesting this matter of the judiciary entirely from any relation, however remote it may be, to politics; they are in favor of placing it in the power where it was originally held under the old Constitution, in the hands of the Governor and the Senate. But I am satisfied, from the tone and temper of this Convention, that that cannot be done. Sir, another step in the same direction has been urged by my constituents, and I think it is urged by the common opinion in that portion of the people who can speak understandingly of this subject, and that is for a longer term—for a term the duration of which, will be as long as in the estimation of this Convention it is proper should be given. Gentlemen get up here and talk a great deal about the people, and that the people desire to have these judges before them as often as possible, in order to correct any evils which may happen. The people who speak upon this question, I venture to say, are but a small portion of the people of the State of New York. The great mass of the people who are called in the vocabulary of gentlemen on this floor "the people," care nothing about this thing, one way or the other, except to have justice administered honestly. It is the men who are engaged in business, in large commercial operations; it is the men who are landholders and land proprietors; it is the bench and the bar, who make up the people who speak in reference to matters of this kind; and they have a right to speak in regard to them, because of their knowledge and their interests connected with this matter. The gentleman from Herkimer [Mr. Graves], who has just taken his seat, has spoken about decreasing the time instead of enlarging it, and that he would prefer four years. I can see very well that some gentlemen would prefer that the term should be four years. Why? Because the lawyers of the State of New York, who number vastly more than the profession requires, desire their turn into the office of judge; and if the term is four years some of them will stand a chance, in the political machinery of the country, of turning into the office of judge and out of the position of lawyer. The result of reducing the term, in my estimation, will be to constantly keep in a perfect whirl your entire judicial system. Instead of re-electing men who have made themselves conspicuous for their uprightness and honesty upon the bench, you will go to work and make a clique in every one of the judicial divisions of the State, and each one of these cliques will put forward its candidate to be the successor of the judge who is about to retire from office. It will tend directly to this: it will bring this question down to a mere political scramble. It will be dangerous to the community. It is with considerable difficulty, in very many places of this State, where, even at the end of eight years of good service, the question is kept free from politics—the question of whether a judge shall or not be renominated by the political party then in power. I believe, so far as regards this matter, it should be as much dissevered from party politics as is possible. But under the elective system this cannot be wholly the case in reference to the nominees. They must represent their political parties. If we put the duration of term at fourteen years, as proposed by my colleague from Onondaga, [Mr. Comstock] and come back to the original proposition of the committee, we shall have done a great deal in that regard. We shall have met the views of the people who desire upon this subject a radical reform. I trust, therefore, we shall now, those of us who are not in the legal profession, yet who speak understandingly of the sentiments of the people in regard to the subject, and knowing that a radical reform is desired, make that reform suggested by the original report of the committee, which has been no less than three times sustained by the majority of this Convention. I venture to say that if this Convention were to-day represented by the same parties and in the same way that it was a few days ago, the result would be as I indicate. But now, after there has been a clear and distinct vote upon the part of the members of the Convention, when we are barely enough to make the majority of any quorum that probably will ever be in attendance here, we seem to be here simply to undo the work, which we ourselves in connection with them, have already done, and compel the return of absentees, at some future period of our, labors to reverse our proceedings.

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Mr. AXTELL—When was this section passed upon?

Mr. ALVORD—I have to say this—that upon the very first and second sections of this article, the matter in reference to the duration of the term of office was determined, so far as regards the court of appeals, and it was determined with the understanding, without any question whatever, that the same principles should run through the whole machinery It was discussed as well with regard to the supreme court; and it was decided so far as the vote and voice of this committee was concerned, again and again in that direction to divers and sundry forms by way of amendment, which were offered to get rid of the fourteen years term of office.

Mr. GRAVES—I desire to ask the gentleman a question. Whether he has known, under the Constitution of 1846, of half a dozen men since the establishment of that Constitution, who have not been re-elected, who were good and able judges, except that the change was made by a political party?

Mr. ALVORD—That is the one change to which I object. I have known a great many changes in consequence of political fluctuations.

Mr. GRAVES—Have the people failed to get good judges by that change?

Mr. ALVORD—I think in a deliberative body like this, speaking in reference to an organic law, no party has a right to name or to call names. But I will say this much to the gentleman, and I will say what is not only true in the instance of which I speak, but in very many other instances in the State. A certain judicial district in this State has once, at least, and since the Constitution of 1846 was adopted, changed its political position, and in consequence of that change, has changed its judges. I will not say that the judges who are now in that district are not good judges. But I cannot say, and neither the gentleman from Herkimer [Mr. Graves] nor any other gentleman who knows the men, can say that the present judges are any better, if, indeed, they are as good; they will say they are are not as good as were those judges who have been ousted from office in consequence of the changed political situation of the locality. Another thing I will say in this regard. If you go to work and make your term of office fourteen years, political parties in the different localities of this State will have sufficient knowledge of the integrity, the uprightness and efficiency of men whom they put before the people for election, to be satisfied in advance that their nomination will make a good judge. They cannot afford to run the risk of getting a judge for four or eight years, for the purpose of trying by experiments whether he is a good officer or not. There may be a vast amount of damage and injury done to the interests of the people of this State, with a four years' experience of an inefficient judge. But if you make a long term of office they will be sure to select an efficient judge for the position which they expect him to occupy. Upon an election of judge for four years there will not be that scrutiny in regard to his capacity that there will be if he is elected for fourteen years. Because the people will say it is an office which returns to us in four years; we can try the experiment, and if he is not a fit man we will get one. But when it comes to electing him for fourteen years, there will be the utmost scrutiny in regard to his capacity and fitness for the position, and we shall have a class of judicial learning upon the bench that may be at least equal to, if not far ahead of that which has hitherto been chosen. Why is it that gentlemen of the legal profession, who are of the highest skill, are not men who in all cases seek for the position of judge? It is because of the short duration of their office; it is because of the vacillation of political life, so that, notwithstanding they may do well—may do admirably—may come up to the fullest expectations of their friends—a political change will, at the end of eight years, place them where they started. But if you give to these men a greater duration of office, I am in favor of striking out the ineligibility clause, because I desire to retain a good judge for a longer time than fourteen years. I do not undertake to say any thing against the present judges in the State of New York. They are high-minded, honorable men; they have done well in the past history of the judiciary of this State, but I do say, without fear of contradiction, that the highest judicial learning of this State is not upon the bench to-day. By the continuance of the course we have pursued in the past, you will keep away from the bench measurably the highest legal ability in the State.

Here the gavel fell, the gentleman's time having expired.

Mr. E. A. BROWN—Assuming it to be true, that this Convention was called mainly for the purpose of reforming the judiciary system of the State, let me ask this committee what the cause of complaint was against the judiciary, and what induced the call of this Convention? Was it that the supreme court of the State was inadequate to discharge the duties devolving upon it, or that the office of judge was filled by incompetent men? Or was it simply and solely because the calendar of the court of appeals was so clogged up that litigation was greatly delayed? The delay occasioned in the court of last resort was a complaint, a just complaint, and an universal complaint, not simply heard from that class referred to by the gentleman from Onondaga [Mr. Alvord], who are capable of knowing something about what the judiciary of the State ought to be, but it was a complaint arising from the people generally throughout the whole State; and it was to get rid of this difficulty in the judiciary system of the State, that this Convention was called into being, and that is the cause of our presence here. That being so, we are here to-day to remedy the evils complained of, and secure such an organization of the court of appeals as shall do away with these complaints. But we have disposed of that question. The question of the tenure of office was discussed. But I deny, and right in my neighborhood are others who deny, that it was any part of our understanding in any manner that the tenure of fourteen years, fixed for the court of appeals, was to have any influence whatever in fixing the term of office of the judge of the supreme court. No such thing at all. It was plain that a more permanent organization of

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the court of appeals was desired, that the judges with a longer term of office should not be interfered with by the judges of the supreme court, who now sit in that court for a single year; and that we might have a constant, uniform, and a permanent court to transact the business in the court of last resort. Now, in regard to the supreme court, I say it has not been a matter of complaint in the State, either that the officers were incompetent to discharge the business, or that the system had failed to furnish the means of transacting the judicial business of the State. It has not been a matter of complaint that the judges of the supreme court have been elected; it has not been complained that they have been elected for a term of eight years. So far as the experiment is concerned, so far as public opinion is concerned (and there are some other people who have understood this subject besides the lawyers and besides the commercial people), the people generally understand the organization and merits of that court, and they are satisfied with it. They all have business in some form or other with the courts. They are all called upon to serve as jurors, to attend court as parties to try their causes, to attend as witnesses, and have thus become familiar with the conduct, ability, and character of the judges, and with the workings of the system, and, as a general proposition, they are satisfied with both. Now, sir, in relation to the oft-repeated argument that we get better judges by a longer term. That is an assumption easily made. As I have said, it has not been a matter of complaint with the supreme court for the last twenty years, in regard to the tenure of office that it was too short. True, political parties have changed; it is also true that even the same party have not, in all cases, renominated judges for re-election. As a general thing re-nominations have been made, and, in cases where they were not made, I do not understand that there is any public complaint as to the judges that have been elected in place of those not re-elected. The gentleman says, in one district, a change of political parties has made a change of judges which has not been an improvement. I respectfully differ with him if he alludes to the district to which I suppose he has reference. I deny that there are any better lawyers in the district than have been placed upon the bench by the people of the district or of the State, either in the supreme court or in the court of appeals. There may be as good lawyers as those elected. When you have selected one lawyer for the bench in a village or a city, I am not prepared to say that you could not, by his side, select another one just as good for the same position, whether for four years, for eight years, or for fourteen years. The public have not complained—they have not called into being this Convention because, in the fifth district or the seventh district, or any other district, the people who had the selection of those judges have failed to select as good men as were to be had. On the contrary, they are satisfied as a general thing. The gentleman says something about politics, as connected with the election of judges. I would like to know when an appplicant goes to the Governor for appointment, if the first question is not what his politics are. I would like to know, when a nomination is sent to the Senate, if the first question asked by senators is not what are the politics of the candidate proposed to be confirmed? It is utterly impossible to wholly divorce the judiciary from politics in this State. How was it under the Constitution of 1821? For fifteen, sixteen or twenty years no man was appointed to the bench of any court in the State by the appointment of the Governor and Senate except such as belonged exclusively to one political party. By the change of the politics of the State there was, I believe, one circuit judge appointed in the city of New York who was of a political party different from that so long in power from and after 1822, and one vice-chancellor in the eighth district who was not of the same political character as those first appointed; but all the other high judicial officers of the State, the judges of common pleas, and masters and examiners in chancery, belonged to one political party. In my judgment, so far as the supreme court is concerned, the election by eight districts has worked satisfactorily and as well as any other system, and with as little political partisanship as any other system, and with as much reliability as any other system. There is no call for a change in that respect.

Mr. DALY—When a gentleman arises on this floor and undertakes to say that the people have not called for a change, in my opinion, he assumes a great deal. He assumes to know what it is very difficult to know, the exact state of the public mind. The value of such a declaration depends altogether upon the opportunity which the gentleman has had for observation, and it can, at best, be but the expression of his opinion. I place myself in the same position, and I take the liberty of saying that there is complaint, and a great complaint in this State of the short tenure for the judiciary, and the value of my opinion on that question, which is the opinion of many other gentlemen in this Convention, may be quite equal to that of the gentleman who has just taken his seat. The gentleman, while admitting that this Convention was chiefly called on account of the judiciary, says that there was only one evil to be remedied, which was the accumulation of business in the court of appeals. Now I put to the gentleman a fact which I stated in my argument the other day, and which I undertake to say cannot be answered, and that is, that, the accumulation in the court of appeals, occurred within ten years after the adoption of the Constitution of 1846. The vote of the people was taken upon two occasions upon plans competent to relieve the court of appeals, and they were rejected by the people on a general vote. It is true, as the gentleman says, that there was no express understanding in this Convention that the tenure of office of the judges of the court of appeals should be controlling in respect to the judges of the supreme court. But was it not most natural that such should be the conclusion? The question discussed was the tenure of the judicial office, whether it was desirable to have a long term or a short term, and it was discussed necessarily with the understanding that, in the Constitution

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of 1846, there is no difference between the judges of the court of appeals and the judges of the supreme court with regard to the tenure of their office. That question, whether there should be any difference, was considered and discussed in the Convention of 1846, as several of the gentlemen who were members of that Convention, and who are now present, will bear witness. The conclusion was reached, that, the reasons which were applicable to the tenure of the judges of the court of appeals were applicable with equal or greater force to the judges of the supreme court. If there be any weight in the reasons which I have offered, and which other gentlemen have offered, with regard to the effect upon judges elected for a short political tenure, every gentleman must admit they apply with greater force to a judge who is limited to a particular locality, and who is nearer and closer to those influences than the judge of the court of appeals, who sits permanently, or for a long period of time, in the city of Albany. Now, with regard to the duration of the tenure of the judges of the supreme court, I have only one additional remark to make, and that is, that, in the neighboring State of Pennsylvania they elect their judges to the supreme court for fifteen years, and they adopted this provision in their Constitution after we had made our changes in the Constitution of 1846. Great care has been exercised in the selection of the judges for the bench of the supreme court in Pennsylvania, and the bench of that court stands as high as any other elective court in the Union. I merely call attention to the fact that at a very recent period, during a very exciting election, when great political questions were involved, one of the most eminent jurists in the State, and one of the most eminent in this country, Judge Sharswood, was nominated and elected for a period of fifteen years.

Mr. M H. LAWRENCE—As gentlemen arise to give expression to what they look upon as public opinion, I merely wish to say that I sustain the proposition of the gentleman from Lewis [Mr. E. A. Brown], because I think the proposition of more importance than much which has yet come under my observation; for I hold, with Dr. Franklin, on the tenure of office, that where annual elections cease tyranny begins. I believe the people of this State had largely in view a reform in respect to the judiciary when this Convention was called. I believe they desire a radical change, or they would not have selected as their representatives to this Convention such a large number of the legal profession. The people are looking anxiously to these gentlemen, in whom they have reposed so much confidence, to re-arrange and remodel the judiciary. We must create something in accordance with the wishes of the public, or we will not meet the approbation of the public. In 1846 this feeling found expression. The people thought the expenses of litigation were distributed unjustly; they believed that those who indulged in the luxury of litigation should pay for it. Fortunately, for the people of the State, a great many of them never go to law; the courts seem to be created for the accommodation of those who desire to go to law. For that reason, and to correct the evil, the Convention of 1846 adopted what was called the court of conciliation. The people of that time anticipated that great good would grow out of that system. In that they were doomed to disappointment. I rose more especially for the purpose of calling the attention of gentlemen of this committee to it, and give some reasons why that system was not carried into effect. If the committee will allow me I will call their attention to the Comptroller's report. We have in it the list of the expenses paid to the judges. There appears to have been but one court of conciliation, although there may have been more, and that one was in the sixth district. There is one thing I find to the credit of that court; that it has not cost the State much. Allow me to read: "expenses of the judge of the court of conciliation, sixth district, for salary, $33.36." That is cheap justice. Although I do not know how much justice was rendered. [Laughter.]

Mr. FOLGER—As much as was paid for, I suppose. [Laughter.]

Mr. M. H. LAWRENCE—Certainly gentlemen cannot complain of the expenses of that court. I have listened, I hope, with some profit to the discussions in this Convention. And I have been almost pained with the fact that, there has been no agreement between the lawyers of this Convention. There are over one hundred of them, and there are nearly as many plans. Why is this? There seems to be something wanting, some sound principle somewhere, or there would be more agreement among the gentlemen comprising the members of the legal profession. I know it is claimed the professional gentlemen of this State comprise, to a large extent, the ability of the State. Now, will they disappoint the expectations of the people? I do not pretend to be conversant with law; I never read law professionally in my life, but I believe there should be some way of settling cases between individuals, in civil cases, in a cheaper and more expeditious manner. I believe that those who go to law should bear the expense in all civil cases—that "those who dance should pay the fiddler," as the homely phrase reads. Now, if it is charged upon the lawyers to make the needed reforms, I think this is a fitting opportunity and a grand occasion for them to get to work and give to the people a judicial system that will amply repay them for the generous confidence reposed in their selection for such an important work; such a result will prove a lasting blessing and glory to our empire State.

Mr. YOUNG—The amendment presented by the gentleman from Onondaga [Mr. Comstock] I think is somewhat impracticable, for the reason that, we have just determined to have the judges of the supreme court elected in districts; and as there are thirty-four judges to be elected in the State, in eight districts there are four judges to be elected from each district except the district comprising the territory of the city and county of New York. In that district I presume there will be six judges. Under the present plan of eight years' tenure a judge will be elected at the end of every second year, but under the plan proposed by the gentleman from Onondaga [Mr. Comstock] a judge would be elected at the end of

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every two years until the expiration of eight years from last fall's election, and then it will be eight years before a supreme court judge will be again elected.

Mr. COMSTOCK—Every judge under the Constitution is elected for fourteen years, and when his term expires another will be elected, and that is all there is about it.

Mr. YOUNG—We have just determined that the old judges shall hold until their terms expire. The gentleman from New York [Mr. Daly] stated that the Convention of 1846 designed to have the tenure of office the same in the supreme court as it was in the court of appeals.

Mr. DALY—I said the system established by the Convention of 1846 made no distinction between the judges of the supreme court and the court of appeals. There was the same tenure for both.

Mr. YOUNG—This is different from what I understood it, but it answers the same purpose for my argument. It has been shown here by gentlemen, that, the Convention of 1846 made a very great mistake in the organization of that court. It made a mistake in respect to the tenure of office. It made a mistake in having these "militiamen" coming up from the supreme court every year into the court of appeals there to create discord among the "regulars" so much complained of by gentlemen here, and then disappear at the end of the year just at the time they had begun to get the run of the business in that court; we have remedied that by making the tenure of office in that court fourteen years, and by providing that that court shall consist entirely of "regulars." But there is no analogy between the court of appeals and the supreme court in this respect, because the court of appeals consists of seven judges elected from the State at large, while each district of the supreme court, except the city and county of New York, will have four judges, and as it is now arranged one judge will go out of office every second year. As the politics of the several judicial districts of the State now are, and as they are likely to be, I claim that a good judge who has served eight years and given satisfaction to the profession and to the public, can be re-elected as long as he is competent to discharge the duties of his office or until he arrives at the age of seventy years. There is a majority large enough in each of the judicial districts of this State to re-elect any good man who is put in nomination upon the ticket. But this does not hold good with the judges of the court of appeals, because they are elected by the State at large, and because the State is carried one year by one of the political parties, and another year by the other political party by majorities too large for any one man on the ticket to overcome. But I can mention a number of supreme court judges who have been upon the bench from the organization of the supreme court under the Constitution of 1846, until they were disqualified from acting by age. But as the profession generally make the nominations, or, at any rate, as lawyers are generally selected as delegates to the conventions which nominate judges, it is presumed that such judges as have served for the period of eight years, and given good satisfaction, who have acted with ability and been honest and upright in their judicial decisions, will receive a renomination from those conventions and a re-election from the people—at any rate, as long as their party is in power in their own district. I am opposed to having a supercilious, arrogant old tyrant upon the bench for the period of fourteen years or for life, who is accountable to no one but his God for his insolence and overbearing demeanor, and who cannot be removed except by impeachment. If such a man should get upon the bench, eight years is quite long enough for him to afflict the profession and impose upon the people. If a corrupt or ignorant and incompetent man is elected to that office, eight years is quite as long as he should be continued in the office; but if the judge is a good man, and at the end of eight years has shown himself to be entitled to be continued in office longer, I claim that in every district in this State he can be re-elected. I desire to have a judge upon the supreme court bench feel his dependence upon the people. It is true, in that situation, he should not have his political favorites, or show political favoritism; the minute he does that, there is an intense clamor from the opposite party set up against him; but he can be a learned, upright, and impartial judge and administer the law between man and man impartially and, at the same time, have strong political feelings and advocate his party principles when off the bench with all the vehemence of a modern politician. There has been a great many judges of this character, not only upon the supreme court bench of this State, but upon the bench of the court of appeals. The court of appeals of this State can put the supreme court of the United States (whose judges are appointed for life) to blush in the purity of its judicial decisions from all political considerations. Sir, a judge who metes out even-handed justice to all, who has an upright and honest heart in his breast, and treats all men with the respect due to their situation in life, need not fear his constituents when nominated for re-election; his party will not be so much changed in his district, but that he will be held in grateful remembrance by those who placed him on the bench. I was a delegate at a judicial convention held in this district last fall, which unanimously nominated one of its judges for re-election. So well were the people and the profession satisfied with his judicial labors, that, no man dared to present himself as a candidate against him, either at the nominating convention or at the polls; and yet, I know that that judge has always had strong political feelings and fearlessly maintained them when off the bench; and, sir, I have no doubt that he and other judges who have shown themselves capable and worthy, will be kept in office by the people and appreciated by them as long as they are competent to discharge the duties of a judge. This is the kind of long tenure that I like, and the kind that should be sought for by every judge upon the bench.

Mr. FERRY—I desire to call to the attention of the Convention to some facts bearing upon this question, and to appeal particularly to that class

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of our members here, who do not belong to the legal profession, and who complain, I suppose as they believe, properly, of the great diversity of sentiment existing among the lawyers in this body. Twenty years ago, previous to the adoption of our last Constitution, we had a judiciary very different from our present one. We had in this State three judges of the supreme court, at general term, doing the entire business of the State; and these judges occupied their offices by the life tenure, as we so term it generally. We then had a court of last resort (our court of errors), consisting of the senate, and we all know how they were elected and for what length of time—acting together with the chancellor and these judges of the supreme court. These three judges not only did the legitimate business of their own court, but they also took part in the decisions of the tribunal of last resort—the court for the correction of errors. All will see at a glance that, this system was very radically different from the present one, and since the last one went into operation, all will agree, and I do not think our lay friends will dispute that fact, that the great cause of complaint with the people, and which led principally to the calling of this Convention, was the supposed imperfections in our judicial system. That leads us to inquire whence came these causes of complaint. The new system being so entirely and radically different from the first, and our complaints having arisen from the last system, have we not reason to believe that they are to be found in the organization of the last court? It is the most evident thing in the world that they do not arise wholly out of the court of appeals, for any person, who will take the pains to consider for a moment the capacity of our present court of appeals to do business and compare it with the Senate and the judges who acted with them, will see that the old court for the correction of errors was a more cumbrous court and not as able to do the amount of business that the present court of appeals may do, however imperfect its organization. Whence, then, arises the trouble? Why is this last court so blocked up? It must inevitably arise out of defects in the supreme court, the court from which appeals arise and are carried into this court. And that is the court whose organization we are now considering. We are inquiring whether something may not be done to better this condition. It seems to me, then, very evident, complaints being made under the present system as contrasted with the old, its organization being entirely different, almost inevitably to follow that we will find the defect in that change, so radical, which was adopted in 1846, between the two courts. Let us inquire, at least, whether it would not be wise in us to retrace our steps somewhat. If we do not readopt precisely the old system about which comparatively not much complaint was made, let us approximate somewhat to it in the changes that we may make. Arguments have been used here, which I will not attempt to repeat, in favor of a long tenure, and a short tenure, but these arguments have been listened to and a repetition of them may not be particularly useful at this time. It perhaps is quite pertinent for members to state here what they believe to be the public sentiment on this subject. I do not believe, however, that the complaint among the people is so much in regard to the tenure of judicial office as of other things. I believe, if this Convention will go on and adopt the life tenure in regard to the courts, the people will be satisfied with it. I, however, do believe that they would prefer much to elect our judges instead of having them appointed. There seems to be a disposition on the part of those who favor the life tenure, to compromise upon this question and fix a reasonable length for the terms of the judges. And now I ask our lay brethren, who complain of great diversity of views among the lawyers, whether we do not, upon those questions, meet almost uniformly with the opposition of our lay friends, and do they not generally vote for the shortest term of official life. There is nothing more evident in the world.

Mr. GRAVES—Will the gentleman allow me a question? Has he read the debates of the Convention of 1846?

Mr. FERRY—I have; some of them.

Mr. GRAVES—In reading those debates does he not find that the old system was more complained of at that time in the discussions than the present system is now?

Mr. FERRY—I do not know how that may be. Every thing was discussed very fully. They discussed the subject a very long time.

Mr. DALY—If my friend will allow me I would say in reply to the gentleman from Herkimer [Mr. Graves], that, all that was said in the Convention upon that subject was embraced in two printed pages, and I have read every line of the debate.

Mr. FERRY—I was not prepared to answer from any recollection at the moment in regard to this particular question, and I thank my friend Judge Daly, for his contribution. I was about to make this remark—

Mr. POND—I would like to ask the gentleman from New York—

The CHAIRMAN—The gentleman from New York [Mr. Daly] has not the floor.

Mr. POND—Then I would like to ask the gentleman from Otsego [Mr. Ferry], if those two pages were not all on one side?

Mr. FERRY—I could not say. I was about to state, Mr. Chairman, that, to every person here, it is evident that the very best court we could have—provided it was acceptable to the people—would be a continuing court. There cannot be any benefit in any change, simply as a change. Elections are not profitable particularly, unless they be necessary; they are not mere pastimes for the people, and should not be multiplied to their prejudice. Certainly if we have a good judge we cannot gain any thing by a change; and there is always more or less evil to grow out of it. It is very evident, that, if a judge is to be elected for a long period, the people will be more careful in the selection of the man. To show the regard of the people for an able jurist, I might add, what my friend from New York [Mr. Daly] omitted to say, in referring to a case somewhat illustrative, occurring at a recent election in Pennsylvania. There was a judge whose political

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opinions were obnoxious, I believe, to the mass of the people in Pennsylvania; and yet he was elected. Why? Because of his distinguished ability as a jurist. People, looking at that one question, overlooked the other. I really believe the people will be satisfied, and be better satisfied, with a system which shall give the judges a reasonable length of terms, and it strikes me that fourteen years is short enough; and inasmuch as we have fixed the tenure of office in the court of appeals at fourteen years, I would not propose that we should enlarge it in this case. But I can see no reason why the same arguments which would favor a long term in the court of appeals would not apply with the same force to judges in this court; and for the harmony of our system it would be better that the terms should be alike, as is now the fact under the present Constitution. For these reasons I shall vote for the amendment of the gentleman from Onondaga [Mr. Comstock], believing that such a course would satisfy my constituents.

Mr. M. I. TOWNSEND—I rise to a single question. The gentleman who has just taken his seat would seem to intimate that three judges in the old supreme court transacted all the business that is transacted by the judges of the present supreme court, there being thirty-three in number.

Mr. FERRY—At general term.

Mr. DALY—I beg leave to correct tho gentleman. There were eight circuit judges under that system.

Mr M. I. TOWNSEND—If the gentleman from New York [Mr. Daly] will allow me, I will make my own statement and allow him to make his. The only judges referred to were the judges of the supreme court, and the gentleman from Otsego [Mr. Ferry] may be fairly understood, by one listening to his remarks, to have intimated that the present judges, thirty-three in number, only transact the business that was previously transacted by three.

Mr. FERRY—At general term.

Mr. M. I. TOWNSEND—Now, instead of that being the fact, the old court, with its three judges, were about seven hundred causes behind. But, in addition to the three judges of the old court, that were then transacting business that is now done by thirty-three judges, there were eight circuit judges in the State. There was a chancellor in the State transacting a portion of the same business. There were a chancellor and three independent vice-chancellors in the State transacting business. There was an almost innumerable list of masters in chancery; there was an almost innumerable list of examiners in chancery. This entire corps, all though the State, were engaged in the transaction of the business that thirty-three laborious men are now laboring night and day—yes, night and day, literally—with an amount of labor and diligence such as no thirty-three men have ever surpassed since the world began—trying to transact. It is doing injustice to the members of the court to have it intimated that three men transacted before, the business that thirty-three men transact to-day. There was an army of men in the State transacting the business, and although, by the adoption of a code, we have somewhat simplified the business, yet, the business that was done by three men, and the others I have alluded to, at that time is substantially transacted by thirty-three men to-day. I arose simply for the purpose of setting this matter right before the Convention and before the people of this State, if they shall read the debates of this Convention.

Mr. FERRY—I will now remark, what I have endeavored to say to the gentleman three times, that I confined my remarks in that particular to the general term business; but it seems I was not so understood.

Mr. M. I. TOWNSEND—We have no separation, either in the present provisions of this Constitution, as far as we have adopted them, or in the Constitution of 1846, between the men who transact business at the general term and the men who transact business at the special term and the men that transact business at the circuit. There is an amount of business resting upon the judges of the supreme court of this State that may well weigh them down; and as long as these men are engaged faithfully in the attempt to discharge the duties of their position, it is unfair to present them as having only to transact the business that was previously transacted well by three men.

Mr. CURTIS—I am one, sir, of the small but highly respectable minority on the floor of this Convention who are not lawyers, and if this were a professional question merely, I should, of necessity remain silent. But the pure administration of justice is the highest concern of every citizen, and it were well, if in this Convention we did nothing else, that at the close of its labors, although they should have extended over the whole year, we should be able to say to our constituents, upon returning, "We have at least secured for you an independent judiciary." The professional gentlemen upon this floor have presented every view of the general subject, with all the decoration of historical learning, with all the eloquence and force of thought and experience, and it is useful, it seems to me, that there shall now and then be heard, a voice from one who may be supposed to represent the great body of clients in this State—the great body of men whose interest in the judiciary is simple and single, who are beyond the reach of professional prizes, who are outside the scope and range of professional ambition, who come to the courts asking one thing, and one thing only, namely, that justice may be done, and who are only anxious to know that the administration of justice is founded upon impregnable principles and sustained by the long experience of free political communities everywhere. The question of the tenure of the judges on the bench, Mr. Chairman, is to be viewed in two very simple lights. In the first place we may look at it in the essential nature of the case; in the second in the light of experience. Now, what is the nature of the case? What is the judge? The judge, as has been already said in the debate, is that functionary in society who declares the law. He does not make it. When the honorable gentleman from Tompkins [Mr. Goodrich], who favors the short tenure in his speech, so forcible,

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so eloquent, so appropriate, urged the precedent of the English system, and granted that, where society is divided into classes long tenure and an independent judiciary may be necessary to preserve the balance between those classes, it seems to me he failed to remember that the essential duty of a judge in every form of free government, whether the English or American, is the same. It is not to maintain a balance between classes of society — it is to do justice between man and man. And again, sir, when he told us that the advocates of the long tenure seemed to question the validity of popular elections, it seemed to me that he forgot this other fact, that the law itself in this country represents the popular will. When a great community is divided upon certain questions the conflict takes the form of parties. When the election occurs, the great majority, which is the final judge in our system, determines what view shall prevail. Then the Legislature, representing that view, enacts the law. That being done what is the interest of every man, whether he is in the majority or in the minority? That the law having been defined by the general sense of the community, shall be declared and administered without fear and without favor and with a single eye to the will of that community thus properly expressed. If there be any thing fully settled in political society, and confirmed by philosophical thought, it is that the power declaratory of the law, or the judiciary, shall be absolutely independent of all the conflicts of party or of public sentiment. But how is this to be attained? It can be attained either by appointment during good behavior or, in the method provided by the report, namely, by election for a long term, or for life, or good behavior. Now, sir, I hold with the American publicist who truly described the people—the State—as a moral being. And when the people of this State or of any State say, "knowing ourselves and our subservience to political passion, knowing the danger of our being driven this way and that way in the fury of party elections, we declare that we will have one thing secure, we will lift up our hands and bear aloft in the serenest air the independence of the judiciary, the ark of our political safety," then I say that the State, resolving to secure itself against its own passions, is fulfilling one of its wisest and sublimest functions. And what is the practical experience of this matter? What system is found, in the long experience of society, most surely to protect the judge from the conflict of party passion? If you elect a judge for six months, is he likely to be well defended against the perils that most beset his position? If you elect him for a year is it essentially better? And so you may go up and ask all the way through. And when my friend from New York [Mr. Daly], in his admirable and eloquent discourse the other day, mentioned the remarkable fact, that, for a period of one hundred and sixty-seven years in the administration of English justice, there were only two instances of judges seriously liable to suspicion under the permanent tenure of office, I say that so far as the question of experience was concerned, the whole debate seemed to me to be closed; for such a fact was not only the most brilliant illustration, but it was the most conclusive argument. We are not to disdain the experience of all other nations in this matter, nor are we to reject the wisdom of our fathers. For a long time, in the colonial history of this country, judges were appointed by the king and held office during the royal pleasure, as the same gentleman [Mr. Daly] stated. At last came the settlement of the grievances against the crown, and among the chief was this: that the judges held office at the royal pleasure, and John Jay—a man whose name will never be mentioned in the State of New York without receiving that meed of respect which high political genius, combined with the most spotless fidelity to public service, will always command among us—John Jay, himself, conspicuous as one of the early patriots, and knowing by experience the perils of this system, was the man who, in the earlier Constitutions of this State, inserted the tenure of good behavior. Those men had had experience. They knew of what they spoke and what they meant. And what is our duty? In my judgment, our duty is to act in the spirit of those wise men. It is to defend the independence of the judiciary by those safeguards which reason and experience approve. I should prefer, I confess, the method already presented in the report of the committee, and I shall vote for the method which comes nearest to that. In giving that vote—although I do not agree with my friend from Fulton [Mr. Smith] that that consideration should guide my action—I have no doubt whatever that I am voting in accordance with the intelligent judgment of the great body of the citizens of this State. Mr. Chairman, amid all the changes which are wise and necessary and just, let us hold fast to those simple principles which are not dependent upon party predominance, which have no relation to party discipline or permanence, but which are rooted in human nature itself, and are illustrated by human experience. This is one of them — there are not many. And when, after the experience of twenty years under the Constitution of 1846, the Committee on the Judiciary brought in their report, I saw in it the expression of the professional experience of the State, gathered in its best representatives from every quarter, confirming the instinct of their unprofessional brethren, I have said that I should not be controlled in my vote by what I supposed to be the feeling of the people behind me. It seems to me that my friend from Fulton [Mr. Smith] made an extraordinary statement when he was upon the floor the other day. If I understood him correctly, it was that we are to be governed in our decision upon any proposition, not chiefly by what we think is expedient—I do not say right—but by what we supposed the people behind us might approve. Sir, it was a wise old English poet who said "look in your own heart and write." I say to my friends in this Convention, "look into your own minds and vote." We were sent here by the people to propose to them what, in the light of our experience and observation and mature reflection, we believe to be best for the fundamental law of this State. It is not for us to adopt a Constitution, it is for us to propose it.

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Here the gavel fell, the time of the speaker having expired.

The CHAIRMAN—By unanimous consent the gentleman from Richmond [Mr. Curtis] can proceeded.

Mr. CURTIS—I have but very few words to add. I was saying that, in my judgment, our duty was to look, as it were, into our own hearts—into our minds and our experience, in order that we might wisely recommend a Constitution. I, for one, wish to go to the people of this State and say: "There, that is what I conceive should be the fundamental law." If they choose, they will reject it; but I shall know that I have done my duty as they will do theirs. If this Convention will act upon that principle, if it will only try to discover what sort of a law this State needs—which is comparatively a simple thing—and not labor to discover what every man of seven hundred thousand voters would like or dislike, I think that our term would be materially shortened, and our work a thousand-fold better done. If our work is to fail, let us, at least, have a Constitution that we are not ashamed of, repudiated by the people. If our work is to be accepted, let us be equally sure that it shall be our pride in future years to say "I, too, was one of the men who made that Constitution." Mr. Chairman, if I may be permitted one word farther — there was in the course of the debate during the last week, an unfortunate question in regard to the judiciary of the city of New York. It was a question of my honorable friend from Herkimer [Mr. Graves], addressed to the gentleman then addressing the committee [Mr. Daly], which drew from him a very appropriate and conclusive answer so far as his personal knowledge or experience were concerned. It referred to the charges that were made in an article published in a late number of the North American Review. Those charges, I presume, being made in a perfectly responsible publication, were not made flippantly nor without investigation. Whatever may be our opinion, or prejudice, or judgment in the matter, we may at least suppose them to have been satisfactory to the author of the article; nor would the editors of the Review have permitted them to appear unless they had been satisfied of the good faith and discretion of the author. Of the merits of that article, or of its author, I have nothing to say. But with what amazing force did the gentleman from New York [Mr. Daly], declare that article itself to be an illustration of his argument. That such things can be said, that they can be said with apparent knowledge, that they can be said in a periodical of the highest character, is of itself another argument against the tenure which the committee in their report seeks to supplant. Mr. Chairman, in an assembly of intelligent Americans I shall not undertake to defend against the extraordinary zeal of the honorable gentleman from Kings [Mr. Schumaker], the publication known as the North American Review. It is a monument of American scholarship. There are few eminent authors or scholars in this country during the last half century who have not contributed to its renown. There is no periodical in the world which has ever maintained for a longer time a higher reputation and character than the North American Review. Its editors, in long and brilliant succession, for half a century, have been among the most illustrious American men of letters. Wherever it goes it bears the fame of our literature, and wherever it is read it is acknowledged as one of the most able, learned, and courteous of periodicals. I could only smile when my friend [Mr. Schumaker], in his energetic and reckless manner, denounced the North American Review as a kind of "yellow-covered novel." Sir, I am not surprised by the gentleman's wrath. The Review has taken a new lease of life under the gentlemen who now control it. It has taken a new lease of life, because it has helped to teach the American people the essential relations between morals and politics; because it has ventured to bring all the results of its scholarship, all the wealth of its experience, all the brilliancy and accuracy of its style, to the discussion of those cardinal questions which underlie the welfare of political society everywhere. I welcome it—I welcome it as a co-worker in the great cause in which we are now engaged upon the floor of this Convention. I welcome it as a powerful ally in the effort to search out and correct the corruptions and dangers which now surround the independence of the judiciary in the State of New York; and, sir, if, by any possibility, we could return to the method toward which the article in question tends, and which the committee recommend, the fierce wave of party discord would fall before the bench which would then be erected in this State; and it is my firm belief that, seated in that serene air, justice would recover her ancient tone and maintain her sweet and gracious temper.

Mr. SMITH—I wish, while the matter is fresh, to make a correction of the position assigned to me by the gentleman from Richmond [Mr. Curtis]. I must have been very unfortunate in expressing myself, because I am quite sure the gentleman would not intentionally misrepresent me. But he has certainly done so in the remarks which he has now made. I did not say that we should be governed in our action here entirely by public opinion and disregard our own views of right. I did not mean to be so understood. But I did say in substance, that in our action here we had no right to ignore public opinion. Upon questions of strict morality—questions which are in themselves right or wrong, or which involve the principles of moral right and wrong, we are not at liberty individually to depart from the strict line of rectitude. But when we come to questions of mere policy—to the framing of organic or administrative law—there we have a right, nay, it is our duty to inquire into the wants and the wishes of the people for whom we are acting. That was my position, and I trust that no one will understand me as saying or believing that we ought entirely to ignore our own views of right, and merely inquire what others may think of our action here. I will not enter into the discussion of the pending question, because other gentlemen desire to occupy the floor. I only desired the privilege of making this explanation while the matter was fresh in the minds of the committee.

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Mr. HAND—I am opposed to the amendment of the gentleman from Onondaga [Mr. Comstock] and I have failed, in the very able discussion of the gentlemen of the profession, to hear an argument that has shaken my confidence in the ability of the people to judge of the qualities, not only of the persons who shall legislate for them and hold the highest executive office in the State, but of all the persons who sit upon the judicial bench, and decide finally upon all questions of life, liberty, property and reputation that come before them for adjudication. I have listened with a great deal of pleasure to the remarks of the gentleman from New York [Mr. Daly], and I always listen to him with pleasure. I was sorry to hear one word drop him which has come from various gentlemen in this Convention, intimating that certain persons in this Convention were ignorant, that their opportunities for understanding the wishes of the people were inferior to those enjoyed by another class of people. I have heard such intimations principally from the gentlemen living in the same direction, viz: in the city of New York, in discussing financial and various other questions. Now, it is not necessary that a man should observe with his own eyes the events which are passing. We know what the feelings of the people are through their expression by the public press. We all have access to that. The defects of the Constitution of 1846, whatever they may be, the wishes of the people regarding these defects and their opinions regarding them, have found expression through the various publications throughout the State of New York; and I am as well qualified to judge of the opinions of that people as the gentleman from New York [Mr. Daly], distinguished as he may be upon the bench of a court in the city of New York. My opinion is that the wishes of the people will not be subserved by making the life tenure or the long term the time for the judicial office, especially in the supreme court of the State of New York; that they have not called us here for any such purpose; that you look in vain for any expression of the people through the public press for any such manifestation or for any complaint of the tenure of office of the supreme court as at present existing. The complaint has been principally of the court of appeals, of the manner in which that court is constituted, by which judges pass from the supreme court to the court of appeals, and especially that judges review their own decisions, by the working of which, cases accumulate in the court of appeals and the administration of justice is retarded. In these things the people demand reform, and I hope we may secure such reform. I want to correct one statement made by the gentleman from New York [Mr. Daly], and he certainly ought to know more than I do about this matter. He is highly pleased with the judiciary as it is established in the State of Pennsylvania. He says in the whole civilized world, I think was the expression, such a court could not be found; certainly not in these United States. I have been looking at the amended Constitution of the State of Pennsylvania. Now, I am willing to adopt the judiciary system of the State of Pennsylvania, essentially as it comes to us. It is not constituted as he represented it to be. The highest court of the State of Pennsylvania, corresponding with our court of appeals, is there called the supreme court. The judges hold their offices for fifteen years. The court of the second class, and corresponding with our supreme court, give their judges a tenure of ten years Now, the committee will discover that, these official terms correspond very nearly with the plan I desire to adopt for the State of New York. I would certainly prefer our period of eight years to their longer term of ten years, but the difference is so small that I can hardly understand how the very learned gentleman can eulogize the Pennsylvania system so highly and then seriously oppose the tenure of office we propose with which it corresponds so nearly. Now, if the gentleman and others, acting with him in this matter, are willing to adopt the Pennsylvania judicial terms of office, which he eulogizes so highly, and say no more about a life tenure for the court of appeals, and fourteen years for the supreme court, I for one will agree to it. I like that better than any thing the gentleman proposes.

Mr. DALY—Will the gentleman allow me to interrupt him? I say the supreme court of Pennsylvania is essentially the same as a court of original and appellate jurisdiction, as our supreme court, and is called by the same name. The only difference is that there is not, as in this State, a higher court above it.

Mr. HAND—In the lower courts of the State of Pennsylvania there is a class of judges who hold their office for five years, provided they behave themselves for that length of time. I am willing to adopt that; that our supreme court judges shall hold their term for five or even for ten years. As I have said, I was highly gratified with many features of the speech of the gentleman from Richmond [Mr. Curtis], as it must be very pleasant to every man to listen to the music of his voice, and the poetry of his sentences, beautifully as they are constructed and come floating down across these seats to our ears. They were very beautiful. They were delightful, and we all listened with pleasure. But when he gave expression to his sentiments, distrusting the people, and desiring to take the power away from them, he only said then what any monarch on the throne of any nation of Europe could have said as well. He only said what any aristocrat who holds his privileges for life, and who is equally, with the gentleman, in favor of permanence and stability, and equally, with him, fearful of any popular influence, would have said as well and with as good reason. He only said what the advocates of the law of primogeniture, which, in Great Britain, holds the property of the realm in the elder branch of the family, would have said as well, and the reasoning is of the same class and the same character. Now, I believe in governing by the people, and I believe they are supreme. I believe they should be intrusted with the supremacy everywhere, not only in electing the President of the United States, who holds in his hand many of our important interests; not only in electing members of Congress, who legislate upon national affairs, and whose duties involve

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control of interests of the very highest order, as regards our citizens, but also of the Governor and the Legislature of this State, and the judiciary of this State as well. No man of ordinary intelligence who attends the sessions of the supreme court or other courts of the State, in this age of the world, when men are educated, when men think for themselves, when men understand all the interests of society — can attend the sessions of a court and listen to the decisions of the judge and his charges to the jury, without being fully qualified to judge of the capacity or incapacity, the partiality or impartiality of that judge. Our intelligent people will take his measure to a fraction. I am willing to trust all this to the people. I am not opposed to the period of eight years, the period for which judges hold office under our present Constitution; but to give them a life tenure, to take away from them that responsibility to which we hold public servants in all other departments of government, is doing violence to a well understood principle of human nature, from the laborer who toils under your care to the highest office in the gift of the people. It is safe to watch your public or private servants, with the power of a speedy removal of the unfaithful. No man will be the worse for that watching. No man will do the worse for that responsibility during his service. I fail to discover, after all the learned speeches on this subject, any difference in the application of this rule between the judiciary and other branches of government. I fail to discover any weight in the objections to this comparatively long tenure. They say men will be political in their decisions. It will be making the office a mere political office. Political parties will sway men on the bench in their judgments. If human nature were perfect I would be willing a judge should hold his office for life. I would have no limit to his power. If he would always do justice between man and man, if he were above the fluctuations to which men are incident in their opinions, if he were above party influence, then I would have no objections to the life tenure. But unfortunately the judge is not removed from political prejudice by being placed upon the bench. He is a man still, subject to human infirmities, subject to human impressions, subject to being swayed by political influence. Place him on the bench for life and he is a politician still. And all these political prejudices sway him as actually when he has the life tenure as though he were elected annually for the same office. We find this by experience. Let experience decide this. I will take the supreme court of the United States. Now, I am not afraid to speak boldly and freely. Any man must have been a poor observer who has not seen that, from the time of Chief Justice Marshall, down to the war of the rebellion, when slavery was swept away forever, in every case in which the subject of slavery was involved, or its interest supposed to be in danger, the decision has been of a political character; a pro-slavery character has been given to the decision. I do not impeach the integrity, honesty and good intentions of those judges, but they have been swayed in those opinions by their subserviency to the slave power, which, happily, is now gone forever. The exigencies of their party have seemed to demand such decisions, and the independence supposed to be secured by this life tenure has utterly failed, as it always will fail, to place judges above the influences that sway common men.

Mr. FOLGER—Has the gentleman ever read the case of Prigg against the Commonwealth?

Mr. HAND—No, sir.

Mr. FOLGER—Then there is one decision which he has not observed. This decision holds that slavery is not of abstract right, but is entirely the creature of municipal regulation. So far, as it seems to me, it does not tend to favor slavery.

Mr. HAND—I have read a good many of these cases. I well remember the case of Passmore Williamson, who was convicted and imprisoned for months in Philadelphia, by a political judge, for a pretended contempt, against all law and reason, so that his own party, for very shame, cried out against him. The gentleman from Onondaga [Mr. Alvord], says that the people will pay very little attention to this subject, that the whole management is left to the members of the bar, that the people care nothing about it; and, before he gets through with his argument, he tells us, if the judges hold their position for only four or six years, they will be subject to the machinations of political maneuverers. Why should the caucus, the wire-pullers, maneuver a man that that they care nothing about? Why should the people who manage the politics here, attempt to control this matter when they care nothing about it, and pay no attention whatever to it, but leave it to members of the bar? Still, there may be danger from that source—that by political maneuvers we shall get political judges. Perhaps all this is logical, and perhaps it is argument that hangs well together, but I do not see it in that light. The whole of the argument of the gentleman from Richmond [Mr. Curtis] was good aristocratic doctrine, a doctrine that you can find everywhere if you go back in history about one hundred years. The universal doctrine then, like the gentleman's doctrine now, may thus be fairly stated: let every thing be removed from and above the people and let every office be permanent. Let no popular influence endanger any man in his place of power. When the advocates of free institutions in king-ridden and priest-ridden Europe shall attempt reform, and attempt to establish republican institutions, that is the first argument that meets them. Why, the speech of the gentleman from Richmond [Mr. Curtis] would be an excellent speech in opposition to any attempt of this kind. It is the speech that you find in the mouths of the aristocrats everywhere. "We want permanency, we want a king or a queen, what holds office for life, above the reach of popular opinion, entirely above the fluctuations of popular parties." I will not repeat the whole of the gentleman's argument, but I say that it is the argument of those who distrust the people, and who are unwilling to commit the people's interests to the the people's care and keeping. I cannot see the distinction that is talked about here, between the judiciary and other important officers. We elect our Governor for a limited period of time. Now the Governor is a very im-

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portant officer and has very important interests in his hands. The pardoning power is an immense power. Men who are convicted of crimes, hold their liberties and lives at the will of the Governor. Should he not therefore be permanent, be placed above the fluctuations of party, be elected for life, or better still, should not the office come down by hereditary descent? Let us take a man and put him in that position, and place him entirely beyond the reach of political parties, beyond the reach of the popular opinion of this generation, and if the argument is good for this, why not let the office be hereditary, and let his children and his children's children, sit there in that high executive seat from generation to generation? The gentleman from Richmond [Mr. Curtis] to be consistent, should argue that the judiciary should not only hold office for life, but that the oldest son should inherit the office, so that the members of that family should go on from generation to generation sitting in the high judicial seat, dressed again in the robes that have been cast off in republican simplicity and as the gentleman should say, in republican folly, and the people should fall down and worship as of old—

Here the gavel fell, the gentleman's time having expired.

Mr. RATHBUN—I do not propose to occupy much of the time of the committee, but there are some things said as we go along that are worthy of a moment's consideration. I have listened to the debate here for a long time, and have followed it around the circle so that we have pretty nearly accomplished the first outline; and the arguments which have been used have been exceedingly various, some of them novel, many that can hardly claim to be called novel, and some that are contradictory. Now, the gentleman from Rensselaer [Mr. M. I. Townsend] who is not in his seat, has given us, on various occasions, his views in regard to the judiciary, and has told us several times of the impropriety of meddling with the court of appeals. He has also told us, on a number of occasions, that that court was the most intelligent, the most industrious and the most able court under the heavens, that there was no court on earth equal to it, that for a period of twenty years we had gone on electing judges to that court, and he defied any man — and he looked about the house for some one to accept his challenge to deny that the men elected to that court had discharged their duty with entire fidelity and with great industry and ability; and that challenge was not responded to by any body, the silence of the house yielding assent to the declaration of that gentleman in regard to the character of the judges of the court of appeals; yet we find him now using arguments to show that it is hardly democratic to allow a man to be elected for a term of eight years, and not at all democractic to allow him to be elected for any longer term. Now, I believe there has been, under the present Constitution, nineteen judges elected to that court, and no man in this Convention has said a word in complaint of any one of them. They were each elected by the people for a term of eight years — by the people, that it is said we are afraid of, because we propose to let them elect their judges for a longer term. My friend from Broome [Mr. Hand] is very fierce in defense of the rights of the people, and because we propose that the people themselves shall pass upon this question of the length of the judicial tenure of office, and shall retain the right to select their own judges, we are charged with being afraid to trust them. Why, sir, instead of being afraid to trust the people we are willing to trust them for any length of time. Confidence in the people is all on our side, and fear of them appears to be on the other side. And, sir, why should we not be willing to trust the people for any length of time when they have shown, during the last twenty years, by the election of thirty-two judges to the supreme court and of four judges to the court of appeals, that they are capable of choosing competent judges, and when the experience of that period shows that there has been no failure anywhere in the State to find good judges. The gentlemen on the other side are really making an argument which shows that the people can be trusted with entire confidence to do their own business, and that they make few, if any, mistakes. Having found that the people have wisdom enough to elect their judges for terms of eight years each, through a period of twenty years, how can we be unwilling to trust them to elect their judges for a term of six years longer, in order to secure to the State a greater amount of service upon the bench, from these unequaled judges without the disturbance of recurring elections? When you see such men unimpeached and unimpeachable, put by the people upon the judicial bench, why should you wish to see them sent away at the expiration of a short term to be replaced by other men?—or, why wish to create a contest between them and other men for their position? Sir, what I desire is that when the people select good judges they may have the benefit of the learning and experience of those judges for the longest possible time. The people are sovereign and they appoint judges and the judges are not only responsible to the sovereigns as sovereigns, but they are responsible to the law and amenable to it for any misdemeanor. But, it is said that this is an "aristocratic" doctrine, and when gentlemen claim that they desire judges to hold office for long terms in order that the people may derive the greatest amount of benefit from the experience and knowledge of the judges we are asked, why not elect our Governor for a long term so that the exercise of the pardoning power and of his other functions may be permanent? The answer to that question has been repeated here over and over again, and it is this: Upon questions of politics where the State officers ought to be subservient to the line of politics, called for by the majority of the people, such officers as the Governor, the Attorney-General, the heads of departments, members of the Assembly, etc., who should be amenable to the will of the people, as declared at their political elections, the term of office should not be long. A general change in the political sentiments of the majority of the people of the State calls for a change in the executive departments of the State government, and the majority of the people have a right to have their line of policy adopted and carried

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forward under their own administration, instead of under the administration of the minority. With the change in the predominant political sentiment, and in the executive offices of the State, there is a change in the general policy of the State in the management of the canals, in the policy of taxation, etc. In such matters, change in politics may properly produce change in the executive policy of the State, but should it change the course of the judiciary? Shall the law change because parties change? Do gentlemen want the law to be as changeable as political parties, or do they want stability, firmness and unchangeableness, and the administration of the law? If they do not want the administration of the law to change in this way, then the judiciary should be above and beyond party, and there should be no such thing as frequent election of judges. These gentlemen want the judges held "responsible to the people?" Why the people they talk about are on one side the democratic party, and on the other the republican party, each to elect its judges, and each judge so elected to be responsible to his party, and not to the whole people. If the judge comes on to the bench a democrat he goes off a democrat in ninety-nine times out of one hundred, and if he is eligible to re-election he goes back to the party that put him on the bench, his allegiance is to his party, and by such allegiance he seeks re-election. This doctrine of responsibility to the people, which these gentlemen promulgate so loudly, simply means responsibility to party. Gentlemen had better begin the examination of these questions, and see to whom responsibility and allegiance are due in such cases. They will find that the practical working of the system proposed is the very thing to destroy this responsibility to party, and substitute for it responsibility to the people. A man may be put on the bench as a democrat, but when he enters upon his duties let him feel that he owes his party nothing, and the people every thing. Then you have a judge who is fit to remain upon the bench so long as he is capable of discharging his official duties. I am in favor of a long term for our judges, because I desire to see a bench formed of judges who, when they take their seats, will feel that they have been chosen by the whole people; that they are responsible to the whole people; that they owe no allegiance to their party; and that they have no claim upon any party for re-election; but that they constitute the only stable and unchangeable part of our government, which is above and beyond all party influence or interference. If gentlemen desire a bench of the opposite character, all they have to do is to vote for a short term of office; then they will find the judges subservient to the party by whom they are elected, and always looking back to that party with anxious eyes to see if they are in the right line of policy to secure re-election. But if you want judges that shall be independent of party ties and party obligations, let them be put upon the bench in such a manner that they will feel themselves above and beyond all party lines and party influences.

Mr. M. I. TOWNSEND—Mr. Chairman—

The CHAIRMAN—The gentleman from Rensselaer [Mr. M. I. Townsend] is not in order, having already spoken once upon this question.

Mr. M. I. TOWNSEND—I do not rise, sir, for the purpose of discussing this question, but to state, with reference to the remarks of the gentleman who has just taken his seat [Mr. Rathbun], that I have never spoken in this body upon the tenure of the judges of the supreme court; and further, that what I did say upon the tenure of the judges of the court of appeals was that I should submit to the proposition of the committee for the fourteen years' tenure, and I was in favor of the election of judges and of their being eligible to be re-elected. I may say further, in order that I may not be misunderstood, that I would prefer the tenure of eight years to the tenure of fourteen years, although I have not made, and I do not propose to make, any point upon it.

Mr. MAGEE—I desire to state briefly some reasons for the view which I take of this question. I have come here with the fixed opinion, an opinion formed long ago, and which has grown to maturity with me in the course of the past forty years, that the life tenure will give the State a better judiciary than any other system, and that it gave us the best we ever had and the best we ever can have. I remember, sir, with great distinctness, the condition of our State prior to the Constitutional Convention of 1821. I was then in my youth, entering upon the responsible relations of life, and I was somewhat of a politician. I took an active part in the changes that were made at that time, and I know what the causes were that changed our judicial system then. The judges of the supreme court were members of the council of revision. I am not quite sure that they did not constitute the entire council. No act of the Legislature could become a statute without their approbation. They properly and necessarily rejected (as our Governors do now) many local and private bills, and so, while in the honest discharge of their duties, they excited the displeasure of the disappointed party. Again, they were members of the council of appointment. You will recollect, sir, as many gentlemen here will recollect, that prior to 1821, all the judicial, executive, and ministerial officers of the State, except Governor and Lieutenant-Governor, were appointed by that council. Your judges, your sheriffs, your county clerks, your district attorneys, your surrogates, even your justices of the peace, had to pass that ordeal. The result was, as it is under our present system, there were more disappointed men than men whose wishes were gratified. The rejected ones, of course, believing that their merits far transcended those of their opponents, became dissatisfied, and so there arose a cry against the judges as being politicians. It was after the war of 1812, not very long after it, when taxes were burdensome as they are now, and an outcry was raised against the old democratic party, on account of their extravagance. It was then called the "Buck-tail" party by way of derision, as the democratic party is now called the "copperhead" party. The democratic party carried the Constitutional Convention, and they demanded at the hands of that Convention that the heads of the judiciary should be taken off, and the judicial system changed, and

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the Convention acquiesced. In that action the people of the State of New York committed a great mistake. We have never had as pure a judiciary since that time as we had before. I confess, sir, that I am in part responsible for that error. I participated in that action, and God knows I have been entirely satisfied long since that it was wholly wrong. Now, the Constitution of 1846 committed another error. The judiciary system which they handed down to us was not equal to that handed down by the Convention of 1821 to them. Gentlemen here argue for long terms, and for short terms. Some gentlemen want short terms and near responsibility of the judges to their constituents. Now, sir, I object to that for the reason that the frequency of our elections is one of the greatest evils of our political system. This often recurring excitement at elections, does more to disturb and demoralize the public mind than all other causes combined. I should like to diminish the number of elections for all officers. I have as much confidence in the honesty of the people as my friend from Herkimer [Mr. Graves] or any other person, but I do not believe that the people are always intelligent in regard to the questions they are called upon the decide. What do the people know about the qualifications of a man who is a candidate for the judgeship? What proportion of the people ever go into an investigation to find out what his legal attainments are, or even to ascertain what is his moral character? I venture to say that there is not one in five hundred who knows any thing about these things, and the judge is elected under the direction of a party caucus, democratic or republican. The people pay little or no attention to the nominations, which are uniformly determined by the politicians of one party or the other. First, there is the caucus, then the Convention, then the nomination, and last the election, all managed by politicians. Now, sir, I prefer a life tenure for our judges; but as I do not expect to get that, of course I shall vote for the next best thing, which is the proposition of the gentleman from Onondaga [Mr. Comstock]. We need upon the bench the highest order of legal talent, the highest order of integrity and morality—our very best men in every way. Now, we cannot induce gentlemen of the highest class to leave profitable professional employments and take a seat on the bench at a moderate salary for a tenure of eight years with a chance, in the case of each judge, that if his party is not in power at the end of his term, he will be cast adrift to shift for himself and find a new business. We cannot get the highest class of men for our judges if we elect them for short terms. The longer the term the better the class of men we will get. I do not wish to say any thing to hurt any body's feelings, but we have here, I believe, a hundred lawyers; most of them are young men, and it just strikes me it is possible that some of them are looking ahead with anxious eye to a position on the bench. [Laughter.] Their chances are better, therefore, with short terms. And I do not know but even my friend from Herkimer [Mr. Graves] may be influenced to some extent by that consideration. [Laughter.] For myself, sir, I favor the long term — the longer the better. I have given my reasons very briefly and imperfectly, but if my voice would permit me to express myself as I feel I would like to state them more fully.

Mr. SMITH—I desire to say a word upon this amendment.

The CHAIRMAN—The impression of the Chair is that the gentleman from Fulton [Mr. Smith] has already spoken upon this subject.

Mr. SMITH—I did not speak upon this question. I merely corrected a misstatement.

The CHAIRMAN—The gentleman from Fulton [Mr. Smith] followed the gentleman from Richmond [Mr. Curtis] in the discussion of this question.

Mr. SMITH—I expressly avoided speaking upon this subject—

The CHAIRMAN—The Chair must decide that the gentleman from Fulton [Mr. Smith] cannot proceed except by unanimous consent. There being no objection, the gentleman may proceed.

Mr. SMITH—This question is, perhaps, the most important one that we shall be called upon to consider in connection with the judiciary. I do not propose to trespass long upon the patience of the committee on this occasion. It is very important that this matter should be decided correctly upon its merits, and I must protest against the assumption of the gentleman from Richmond [Mr. Curtis] that all of the profession upon this floor who have addressed the committee upon this subject have spoken from interested motives.

Mr. CURTIS—Will the gentleman allow me a moment? In what I said upon this question I did not attribute interested motives to lawyers upon this floor. I merely stated that I myself, in company with the great mass of the people of the State, was entirely beyond the influences that might affect the profession. I certainly was very far from saying what the gentleman attributes to me.

Mr. SMITH—I may have misunderstood the gentleman; but I understood him to say in substance, that it was time now that the clients of State were represented here after so long a discussion of this subject by the profession, who might be acting under interested motives. Now, sir, I believe that gentlemen of the profession upon this floor have no desire to adopt a system that shall not subserve the best interests of their clients, the people of this State; and I believe that they are as well able to determine what the interests of their clients demand, as gentlemen who have never had any experience either in the profession or as clients. I must protest, also, against that other doctrine promulgated here by the gentleman from Richmond [Mr. Curtis], and also by the gentleman from New York [Mr. Evarts], that in our action we are entirely above and beyond the people, and the wishes of the people. It is a very pleasant thing, doubtless, to dwell on the top of the mountain, and feed upon ambrosia and drink pure nectar; but, sir, we are here making a Constitution for the people of the State, for the every-day realities of life We are not here to legislate for the gods, but for men, and we must come down to the atmosphere of this nether planet, and we must adapt ourselves

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to the wants and wishes of the people. I trust, sir, that I shall never be guilty of the cowardice of departing from the cause of truth and morality because the people may demand it; but, on the other hand, when I am acting in a representative capacity, I trust that I shall ever regard the wishes of the people, and never set up any mere notion or fancy of my own on questions of policy, instead of their will, and adhere to it regardless of consequences. I ask you, Mr. Chairman, and the delegates upon this floor, what would be the result of our labors here, were we to follow the rule suggested by the gentleman from Richmond [Mr. Curtis] and by the gentleman from New York [Mr. Evarts] the other day, and insist upon what best suits our fancy, disregarding what the people demand and what they would accept? Now, sir, I insist that we are bound to adapt ourselves to the circumstances that exist in the State, and to the wants and wishes of the people. I might regard the life tenure as the best, but if I believed that the people did not so regard it, that they would reject any Constitution in which it should be incorporated, ought I to insist upon presenting such a Constitution to the people? Would that be wise statesmanship, or even good common sense? I think not? But I do not think that the elective system and the life tenure belong together. If judges were appointed I would not object to the life tenure, although I think it more properly belongs to the past than to the present. But some people seem to live in the dead past, and utterly ignore the living present. It would be wiser, it seems to me, to recognize the present, and to recognize progress in human affairs. It is said by gentlemen that we may trust the people to elect judges for a long term. Now, sir, I think the people require that, if you permit them to elect their judges, or rather, if you devolve upon them the duty of electing their judges, they shall have the privilege of getting rid of a bad judge in case they should be so unfortunate as to elect one. I repeat, sir, that the elective system and the life tenure do not properly belong together. Gentlemen have talked here about political influences, the caucus system, and the evils of partisan elections. Sir, I know it might happen, under an elective system, that by wire-pulling, by caucus arrangements, or by the use of corrupt means, a man might be foisted upon us as judge who would be unfit for the position, either from incompetency or dishonesty. If we should be so unfortunate as to elect a man of that character for a term of fourteen years, would it not be an intolerable evil? Should we not have the privilege of getting rid of him at the end of a shorter period, and replacing him by a man fitted for the position? I am not strenuously opposed to a term longer than eight years; but I think there is good reason why the judges of the court of appeals should hold their office for a longer term than the judges of the supreme court. I voted for a term of fourteen years for the judges of the court of appeals, but I am opposed to so long a term as that for the judges of the supreme court. I believe, in the first place, under an elective system that is too long a term; and, in the second place, that the people are not willing to adopt so long a term under the elective system. I have taken some pains to ascertain public opinion in the section of the State in which I live, and which I have the honor to represent in part. I have believed it to be my duty to ascertain what the public sentiment was, and have not felt that I was above public opinion, or the wishes of my constituents. I have felt rather that I was but an humble representative. Why, sir, are we the lords and masters of the people, placed here to frame a Constitution which they must adopt *nolens volens*? I do not so understand our position. In my inquiries among the people I have learned, I think, that they are not willing to adopt a fourteen years tenure if they are to elect their judges. Holding this belief, I shall act upon it, notwithstanding the gentleman from Richmond [Mr. Curtis] may look down with supreme contempt upon such a rule of action and upon the people. Now, sir, in the court of appeals, where we desire permanency and stability, a court which will act as a regulator of inferior courts, there is a propriety in having a longer term of office. But when we come to the supreme court judges, before whom the bar have to appear every day, there is a propriety in retaining a certain control over them, not to destroy their independence, but to correct their vices if they have any, to check their arrogance if they manifest it, and to secure a courteous and faithful discharge of their duties. Gentlemen say that we want permanency and independence in our courts. I would inform them, that, if we give a long tenure to our judges we give permanency and independence to vice as well as to virtue. If we could be perfectly sure of always getting the right men, then those arguments would apply with force; but when we may possibly get a bad man, I am opposed to giving permanency and independence to his dishonesty or imbecility on the bench. I am opposed to placing over me, with my own hand, a tyrant or an imbecile, and depriving myself of all power to get rid of that tyrant or imbecile for a long term of years. If you give the appointment of the judges to the Governor of the State I will accept whoever he may place over me with as much grace as I can command, and try to be satisfied; but if I am to have a voice in electing the judge, and may be so unfortunate as to make choice of a bad one, then I want the privilege, in the shortest possible time, of putting a suitable man in his place. Now, sir, it has been said, and I repeat it, that if a man is a good judge he can be re-elected. In the district where I practice law every judge has been re-elected and I have voted for their re-election.

Mr. HALE—Does the gentleman mean to state that in the fourth district all the judges have been re-elected?

Mr. SMITH—I so understand it.

Mr. HALE—It is a great mistake. Every one of the judges who were elected under the Constitution of 1846 were not re-elected.

Mr. SMITH—I am speaking of the present judges, those now occupying the bench in the fourth district. I am quite sure that they have all been re-elected. I certainly have voted for every one of them, and with the understanding on my part that I was voting for their re-election

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Mr. HALE—I understood the gentleman to speak of all the judges who have occupied seats on the bench under the existing Constitution.

Mr. SMITH—No, sir. I spoke only of the present judges. These, Mr. Chairman, are the reasons, in brief, why I am opposed to a tenure of fourteen years. But I am willing to adopt either eight, ten, or twelve years. If we should adopt either of these terms, I think the people would approve our action; but I do not think a longer term for the supreme court would be acceptable. We should, in my judgment, regard the wishes of the people, and not act as though we supposed that we were the people and that wisdom would die with us.

The CHAIRMAN—The question is on the motion of the gentleman from Onondaga [Mr. Comstock], on taking out all after the word "judges," in the seventh line of the sixteenth section, and insert: "elected under this Constitution shall hold their offices for a term of fourteen years."

Mr. SPENCER—I would inquire whether that does not strike out the amendment which has just been adopted, continuing in office the present judges of these courts?

Mr. COMSTOCK—Oh, no. There was an amendment proposed by the gentleman from Lewis [Mr. E. A. Brown], making the term of the judges of the supreme court, and the other courts named in this section, eight years. I offer my amendment as an amendment to that, because I prefer fourteen years to eight years, and not because I prefer fourteen years to a life tenure. If my amendment shall prevail over the amendment of the gentleman from Lewis [Mr. E. A. Brown], we shall then have a term of fourteen years as an amendment to the term for life or during good behavior; and the question will then be for the committee to decide between the term of good behavior and the term of fourteen years. I take it that the immediate question is whether fourteen years shall be preferred to eight years.

The question was put on the amendment of Mr. Comstock, and, on a division, there were ayes 39, noes 36, no quorum voting.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. C. C. DWIGHT, from the Committee of the Whole, reported that the committee had had under consideration the report of the standing Committee on the Judiciary, had made some progress therein but that having found, on a division, there was no quorum present, they had directed their Chairman to report that fact to the Convention.

The PRESIDENT—The Secretary will call the roll of the Convention.

Mr. COMSTOCK—I move that when the Convention adjourn it adjourn until seven o'clock this evening.

The PRESIDENT—That is the standing order of the Convention,

Mr. COMSTOCK—I thought that an adjournment now would carry the Convention over till to-morrow. My object in making the motion was to avoid that.

The PRESIDENT—We will first ascertain if there is a quorum present.

The SECRETARY proceeded to call the roll of the Convention when the following delegates responded to their names:

Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Axtell, Baker, Barker, Barto, Beals, Bell, Bickford, Bowen, E. A. Brown, Case, Cassidy, Cheritree, Chesebro, Comstock, Cooke, Curtis, Daly, Duganne, C. C. Dwight, Eddy, Ely, Endress, Farnum, Ferry, Field, Flagler, Folger, Fowler, Francis, Fuller, Garvin, Goodrich, Graves, Gross, Hadley, Hale, Hammond, Hand, Hardenburgh, Harris, Hatch, Hitchcock, Houston, Hutchins, Ketcham, Kinney, A. Lawrence, M. H. Lawrence, Lee, Ludington, Magee, Mattice, Merrill, Merwin, Miller, Monell, Nelson, Opdyke, A. J. Parker, C. E. Parker, Pond, Potter, President, Prindle, Prosser, Rathbun, Robertson, Roy, Seaver, Smith, Spencer, M. I. Townsend, S. Townsend, Van Campen, Wakeman, Wales, Williams, Young—83.

The PRESIDENT—There is a quorum present, but it being now near the hour for taking a recess, if there be no objection, the Chair will declare a recess until seven o'clock this evening.

There being no objection the Convention took a recess until seven o'clock P. M.

EVENING SESSION.

The Convention re-assembled at seven o'clock, and again resolved itself into a Committee of the Whole, on the report of the Committee on the Judiciary, Mr. C. C. DWIGHT, of Cayuga, in the chair.

The CHAIRMAN announced the pending question to be on the amendment of Mr. Comstock to the amendment of Mr. E. A. Brown, substituting fourteen years as the tenure of office of the judges of the supreme court instead of eight years.

The question was put on the amendment of Mr. Comstock, and, on a division, the vote stood 41 ayes to 20 noes.

A DELEGATE—There is no quorum voting.

The CHAIRMAN—The Chair will put this question again, several gentlemen did not vote. Gentlemen will please vote.

The question was again put on the amendment and, on a division, the vote stood 43 ayes to 36 noes.

The CHAIRMAN—There is no quorum voting. The Chair must request gentlemen to vote.

Mr. CHESEBRO—I rise to a question of order—seventy-nine is a quorum.

The CHAIRMAN—The Chairman is of opinion that seventy-nine is not a quorum. It requires eighty-one to constitute a quorum.

The question was again put on the amendment and, on a division, it was declared carried by a vote of 49 to 35.

The question recurred on the amendment of Mr. E. A. Brown, as amended.

Mr. McDONALD—I move to amend the amendment by inserting twelve years instead of fourteen.

The question was put on the amendment of Mr. McDonald, and, on a division, the vote stood 37 ayes to 40 noes.

A DELEGATE—There is no quorum voting.

The CHAIRMAN—Gentlemen will please vote.

The question was again put on the amendment,

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and, on a division, it was declared lost by a vote of 40 to 40.

Mr. BICKFORD—I move to substitute ten instead of fourteen.

The question was put on the motion of Mr. Bickford, and it was declared lost by a vote of 35 to 48

Mr. BICKFORD—I move to reconsider the vote by which an amendment offered by the gentleman from Ontario [Mr. McDonald] to substitute "twelve" for "fourteen", was lost.

The question was put on the motion of Mr. Bickford, and it was declared lost.

Mr. COMSTOCK—I suppose the question is now upon the term of fourteen years.

The CHAIRMAN—That is the question. The question is on the amendment as amended, substituting fourteen years for the life tenure, as reported by the committee.

Mr. EVARTS—We are now, I suppose, brought—

Mr. AXTELL—I rise to a question of order. The gentleman from Jefferson moved a reconsideration of the vote, and called a count. If I understand it, that count was not had.

The CHAIRMAN—The Chair has no knowledge of a count being called for. The motion was evidently lost on voices and was so declared.

Mr. EVARTS—The question now proposed for the vote of the committee is, I suppose, the same which was passed upon in reference to the court of appeals, which is the question, whether the committee will prefer to fix the period of fourteen years, or tenure during good behavior up to the age of seventy. The same consideration which led gentlemen to support the tenure during good behavior, for the court of appeals even with greater force, it seems to me, applies to the supreme court judges. I take it that nothing has occurred in this body which has at all disturbed the argument presented in favor of a tenure during good behavior. Undoubtedly those who voted for a court of appeals tenure for a fixed term rather than for good behavior, will feel the same reason for voting for it now. I see no reason why the tenure during good behavior, for those judges should not be supported by at least as full a vote as was given for the tenure of the judges of the court of appeals.

The CHAIRMAN—The question is on the amendment as amended.

Mr. McDONALD—Do I understand the amendment is accepted?

The CHAIRMAN—There is no necessity for its being accepted; the amendment has been adopted by the committee; the question is now upon the amendment as amended.

Mr. CURTIS—I call for a count.

The question was put on the amendment of Mr. E. A. Brown, as amended, and, on a division, the vote stood 52 ayes to 25 noes.

Mr. CHESEBRO—There is no quorum voting. There are gentlemen here who have not voted.

The CHAIRMAN—The Chair is quite sure there is a quorum present. Gentlemen in favor of this amendment will please vote.

Mr. YOUNG—I am opposed to both that amendment and the provision in the report. I do not know how I shall vote in that case.

The CHAIRMAN—The Chair is not able to inform the gentleman.

Mr. COMSTOCK—The gentleman must take his choice, I suppose. [Laughter.]

The question was again put on the amendment as amended and, on a division, it was declared carried by a vote of 62 to 20.

There being no further amendments the SECRETARY read the eighteenth section as follows:

SEC. 18. There shall be elected in each of the counties of this State, except the city and county of New York, one county judge, who shall hold his office for seven years. He shall hold the county court and perform the duties of the office of surrogate. The county court as at present existing, shall be continued with such original and appellate jurisdiction as shall from time to time be conferred upon it by the Legislature. The county judge with two justices of the peace, to be designated according to law, may hold courts of sessions, with such criminal jurisdiction as the Legislature shall prescribe, and perform such other duties as may be required by law. The county judge shall receive an annual salary to be fixed by the board of supervisors, which shall not be diminished during his continuance in office. The justices of the peace for services in courts of sessions shall be paid a per diem allowance out of the county treasury. In counties having a population exceeding forty thousand, the Legislature may provide for the election of a separate officer to perform the duties of the office of surrogate, whose term of office shall be the same as that of the county judge. Inferior local courts, of civil and criminal jurisdiction, may be established by the Legislature in cities; and such courts, except for the cities of New York, Brooklyn and Buffalo, shall have an uniform organization and jurisdiction in such cities.

Mr. C. L. ALLEN—I offer the following amendment:

The SECRETARY read the amendment as follows:

"After the word 'continued,' in the fifth line, strike out the residue of the line, and also the sixth line, and to and including the word 'Legislature,' in the seventh line, and insert as follows: 'And shall have original jurisdiction in all actions of slander, libel, malicious prosecution, assault and battery, false imprisonment, seduction, and breach of promise of marriage, and shall also have such other original and such appellate jurisdiction as shall from time to time be conferred upon it by the Legislature. No county judge shall be permitted to practice in any of the courts of this State during the term for which he shall have have been elected.' In the sixteenth line strike out the word 'may,' and insert the word 'shall,' and after the word 'judge,' in the nineteenth line, add 'and all surrogates in office when this Constitution shall take effect shall hold their respective offices until the expiration of the term for which they were respectively elected.'"

Mr. C. L. ALLEN—The amendment, in part, consists of the amendment offered earlier in this debate by Mr. Cooke. In offering this amendment I am not about to inflict a long speech with which to tire the patience of the Convention, but

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I will endeavor to state, as briefly as I may, the reasons which have induced me to present it for the consideration of the Convention. This amendment is, with a little addition, substantially the proposition heretofore submitted by my friend from Ulster [Mr. Cooke], as found in Document No. 111. It will be recollected, that, early in the session, I introduced a resolution, which was adopted, directing the Judiciary Committee to inquire into the expediency and propriety of reporting a section enlarging the powers and duties of the county courts. The resolution was referred to that committee, and though not specifically answered in their report, it no doubt received some consideration at their hands, for they modified the section of the Constitution of 1846, as will be seen by a reference to it. By the fourteenth section of the sixth article of that instrument, it was provided that the county court should have such jurisdiction in cases arising in justices' courts, and in special cases, as the Legislature should prescribe, but should have no original civil jurisdiction except in such special cases. This provision effectually cut off pretty much all jurisdiction in civil proceedings except such as might be denominated or construed to be special cases. This led to a variety of legislative enactments, giving rise to a judicial construction relative to the powers and duties of county courts, and the Legislature gradually enlarged their powers so as to give them jurisdiction in cases of foreclosing mortgages, partitions of real estate, and the sale of infants' estates in cases arising in their respective counties, and a variety of other matters denominated special, not necessary here to enumerate, but all of which tended to increase the responsibility and respectability of those courts. They could not, however, and cannot try causes except in certain cases originating in justices' courts, and brought before them on appeal. The judiciary committee, in the eighteenth section of their report, which it is proposed to amend, provide that the county courts shall be continued with such original appellate jurisdiction as shall, from time to time, be conferred upon them by the Legislature. I propose to go farther and insert the particular sections named in the amendment, and leave other sections to the wisdom and discretion of the Legislature. I would, in fact, give these courts original jurisdiction, in all cases, and if the committee deem it wise, or any member should propose an amendment to that effect, I will cheerfully adopt such suggestion or accept such amendment. My amendment covers a class of actions which may well be intrusted to these courts for trial, and may thus be disposed of to the great relief of the circuit and supreme courts. The county courts, as proposed to be constituted, and indeed as they were constituted by the Constitution of 1846, are to be upon a very different basis, and to be conducted on a very different plan from that which created them under the Constitution of 1821. By that Constitution, the county court was made to consist of five judges, all of whom might be laymen, except it was the first judge, and he, of the degree of counselor of the supreme court, was vested with certain duties at chambers, which were otherwise required to be performed by a justice of the supreme court. One great objection urged by members of the Convention of 1846 against continuing the original jurisdiction of these courts, which they possessed under the Constitution of 1821, was that, the five judges, as the court was then constituted, were too often composed of men entirely unfitted for the station, that they were mere judges in name, without qualification, and that they did not add strength or efficiency to the court. "It is composed," said an eminent member of that Convention, "generally of a judge at the head, and one or two fools on each side of him;" and he gave an instance in one of the counties, where an intelligent and learned man who was the presiding judge in such a court pronounced a decision as the opinion of the court. When he had concluded, one of the side judges arose with great importance and said, "It may be the opinion of the court, but it aint mine by a d—d sight." [Laughter.] This brought up the associate on the other side, who also arose and added with an oath, "Nor is it mine.' The presiding judge then quietly remarked to the bar, "Gentlemen, I am overruled." An alteration in the mode of constituting county courts, as I have already observed, was made by the Convention of 1846. They were made to consist of one judge only, but with circumscribed powers already stated. It was urged as another reason for thus limiting the power of the court, that the supreme court as proposed to be constituted, could and would do all the business that would be imposed upon it, in the trial of all civil actions, and that the county courts were only needed for the hearing of appeals from justices' courts, the disposal of such little special business as might be intrusted to them by the Legislature, and that the transaction of any other business would cast a useless expense upon the several counties. But has this proved to be the case? On the contrary, has not the experience of all of us proved that such a system has been productive of great delays and has added more to the expense of conducting the circuit courts than would have been incurred if county courts had been clothed with original jurisdiction? The time that has been occupied in the trials of this class of cases to which I have referred has frequently prevented the trial of important causes, amounting in many instances, by reason of the delay, to a denial of justice. Petty actions of assault and battery and slander have frequently occupied the whole time allotted for a circuit, while the costs and expenses of those attending upon the trial of more important matters has been enormous. I have known circuit after circuit, where the time of the court has thus been virtually wasted. At the last circuit in Washington county the whole week was taken up with the trial of three actions — two of assault and battery and one of slander. There was one verdict of ten dollars, one of six cents, and in the other a nonsuit was ordered. Now all this may and will be avoided by the course I have proposed in my amendment. Such actions, though perhaps not as frequent as formerly, will still be brought. It has long ceased to be considered by men of high and honorable standing that an action of slander is necessary to protect one's reputation, or secure a continuance of good character. But they will still exist, to a

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greater or less extent, and if they must be brought, let them be disposed of by the county court, and the penalty to be fixed by the Legislature as formerly, restricting them as to cost, if brought in the supreme court; and in most cases where business is of a local character particularly, parties will prefer to try their causes before their own tribunals. Make it an object, as I remarked, for capable, worthy men to aspire to the office of county judge; provide liberally for compensation, and you cannot fail to have afforded a great relief to the burdens imposed upon the supreme court, and you facilitate and expedite the presentation of the large and accumulating business of your State. On the other hand, it was urged, by distinguished members, that while they did not expect or desire that the county courts should be continued as they were then constituted, and disqualified as many of the judges undoubtedly were, yet, if it was made a respectable court with ample power and jurisdiction, and constituted by the appointment or election of a single judge, who might in every way be qualified for the station, it would then be an important aid in the disposal of the business appertaining to courts of law, and would prove a great saving of time to the superior courts, which would thus be enabled to bestow greater attention to the more important business before them. The courts were organized as proposed, but their powers were restricted. Even with the limited jurisdiction allotted to these courts, they have, I believe, in most instances, been very reputable tribunals. In most cases lawyers of respectable standing in the profession, and held in high estimation as to private character and worth, have been elected to the office of county judge, and they have brought credit and worth upon the courts. How much more could that worth and respectability be increased, if you added power and jurisdiction to the courts, and made the office of judge a much more honorable and important position than it now is? Make it thus an object to be sought after by capable and worthy men, and pay them liberally for their services, and you add, in my judgment, a great aid to the speedy transaction of legal business. I know, from my own experience, that even under the old system of 1821, by a fortunate selection of judges in the county in which I reside, cases were as well and ably tried for years as they were in the supreme court. This was when such men as Judge Willard and Judge McLean and their associates formed our court of common pleas. This may and will be the case now, if proper inducements are held out and the services of capable incumbents secured. As there has been a motion to divide the question on my amendment, I will say nothing more now.

Mr. COMSTOCK—I would suggest that we proceed with so much of the amendment of the gentleman from Washington [Mr. C. L. Allen], as relates to the jurisdiction which shall be given to the court.

Mr. CHESEBRO—Is an amendment now in order?

The CHAIRMAN—An amendment is now in order.

Mr. CHESEBRO—I will apologize for the amendment I propose to offer, because it is not in that shape that it should be to be incorporated into the Constitution. Still, it embraces the idea I wish to have in the Constitution, and I will read it with the permission of the Convention. It is to strike out that part of the amendment offered by the gentleman from Washington [Mr. C. L. Allen], which, as it now is, is inconsistent with the amendment I propose. I desire that the county court shall have original jurisdiction in all other cases than those specified by him, where the parties to any action shall reside in the county, in which the damage to be collected shall not exceed one thousand dollars.

Mr. C. L. ALLEN—Does the gentleman propose to add that?

Mr. CHESEBRO—This is in addition to the specific jurisdiction conferred.

Mr. C. L. ALLEN—I desire to add the words "criminal conversation" to come in after "seduction."

There being no objection the amendment of Mr. C. L. Allen was so amended.

Mr. CHESEBRO—Will the gentleman accept the amendment I have offered? It is simply this, that the amendment of the gentleman from Washington [Mr. C. L. Allen] shall give to that court original jurisdiction in all cases where the parties reside in the same county, and where damages are claimed in an action to the amount of one thousand dollars.

The amendment was accepted.

Mr. COMSTOCK—I move to amend by adding these words: "subject to such provisions as shall be made by law for the removal of the cases into the Supreme Court." I offer this to the end that there may be a power in the Legislature in the class of cases, the jurisdiction of which is expressly conferred upon the county court, to remove them under wise limitations into the supreme court. I think this jurisdiction of the county court might be intolerable unless qualified in that way. There might be cases of great moment, where the defendant might have excellent reason for asking the removal of the case into the supreme court. I therefore propose that the Legislature shall have power to provide by law for such removal.

Mr. ANDREWS—The pending question is one, doubtless, of much importance, and has attracted the attention and consideration, I doubt not, of most of the members of the Convention. It will be recollected that, under the Constitution of 1846 it was provided that county courts should be organized and should have such jurisdiction in special cases as might be conferred by law. It was supposed that, under this provision, the Legislature could confer upon county courts jurisdiction in specified common law actions as the Legislature might determine; and the Legislature acted upon this assumption by subsequently conferring upon the county court original jurisdiction in certain cases known as cases at common law. But upon the consideration of the constitutionality of that legislation, the court of appeals decided that the phrase "special cases" in the Constitution restricted the power of the Legislature to confer jurisdiction to proceedings known as special proceedings, and excluded the Legislature from the right to confer

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jurisdiction in ordinary cases. Upon that construction the county courts have since been carried on. The question whether or not those courts should be made courts of original jurisdiction was discussed in the committee which reported this article; and although a variety of ideas was entertained upon this subject, it was, I believe, unanimously considered by the committee, in the end, that it was better and safer to provide in the Constitution that the Legislature might confer upon county courts jurisdiction in common law actions without attempting to here designate them, and without imperatively clothing them with jurisdiction in any specified cases. The precise difference between the section as reported and the section as now proposed to be amended is this: shall we, by the Constitution, determine and affirm the jurisdiction of the county courts in the actions specified, or shall we confer upon the Legislature power to vest this jurisdiction, without assuming ourselves to determine whether it shall be conferred or not? Now, I am strongly of opinion that it is better to leave this subject as the committee have left it, subject to the control of the Legislature. In many States of the Union —Pennsylvania, for instance—the county courts are the principal courts of original jurisdiction in the State. They occupy the place of the supreme court under the organization in this State; and, in that State, it is a very important court and an indispensable part of the judicial system.

Mr. HATCH—I would be very glad if the gentleman from Onondaga [Mr. Andrews] would explain, if he is familiar with the construction of the courts in Pennsylvania. So far as I am informed, it is much more simple than our courts. I would like him to say whether it is a better system than ours.

Mr. ANDREWS—I am not familiar with the precise details of the system in Pennsylvania. But I undertand that they have a court known as a court of common pleas, and the territorial jurisdiction of that court is not confined to a single county. I understand that it is the only court of original jurisdiction, aside from the inferior courts, in that State.

Mr. HATCH —I am informed, by very high authority, that the appellate jurisdiction of that State is composed of about five judges, and that they dispose of all the cases before it, and keep up the calendar of the court.

Mr. ANDREWS—The reputation of that court no doubt is high. I was proceeding to say that, in my judgment, it would be best to leave this matter as the committee have left it. And for this reason: we must remember that in this State there are many counties with a population ranging from sixty to one hundred and twenty thousand souls. In those counties, I have no doubt, there could be organized an efficient county court, because the amount of litigation in a dense population would be sufficient to give employment to such a court, and the compensation could be such as to attract to the bench men of ability and talent, which would give the court character and influence. On the other hand, there are a number of counties in the State in which the population ranges from eighteen to thirty-five thousand. I think the population of nearly half the counties of the State is within the latter number. And I submit to gentlemen representing small counties, whether there is not now an adequate force in the supreme court, to do the business which arises in those counties, and which renders unnecessary the expense of an organization of a county court for the trial of original actions. If we had no supreme court, county courts would be indispensable. But I submit that the expense of organizing and keeping up these courts in these small counties, is not only unnecessary, but that the result would be that, in such counties, while the jurisdiction would be important, the bench would be weak and inefficient. The counties would not be willing to provide the compensation that would be necessary. Hence, you would have an extremely inefficient judicial organization to do important business. For this reason I am of opinion that it is better for this Convention to leave this subject in the hands of the Legislature, and while removing the restriction of the Constitution of 1846, leave the Legislature to organize these county courts, having regard to localities, and not attempt to confer a uniform and absolute jurisdiction in the cases referred to. I trust, therefore, that the committee, upon the consideration of the whole question, will leave the subject where the Committee on the Judiciary have left it.

Mr. CHESEBRO—I have no desire to consume time in the discussion of this question. My object in offering this amendmemt was twofold. In the first place, I deemed it impracticable to insert in the Constitution, as has been attempted by the gentleman from Washington [Mr. C. L. Allen], a class of cases which ought to be submitted to the jurisdiction of the county court. For instance, it is impracticable to designate and name all the cases which really ought to come within the jurisdiction of that court, as has been attempted by him; and that therefore it would be wise to insert, in addition to those cases he mentions, that the jurisdiction of the court should amount to a thousand dollars, or to any other limited amount which the Convention sees fit to adopt—not exclusive jurisdiction but jurisdiction for the trial of that class of cases. Now, sir, I should have been willing as a member of this Convention to have adopted, without any amendment whatever, the report of the Committee on the Judiciary. Although there are features in it which did not meet my approbation, still I should have been willing to have taken that, as a whole, as a good constitutional provision. But inasmuch as this committee have seen fit, as they have in regard to pretty much every other report which has been submitted to them, to overhaul it and to attempt to better that which has been submitted to the minds of eminent gentlemen who are from different sections of the State, I deem it a privilege to attempt also to introduce some amendments and improvements to this article. Now, sir, in regard to this county court, as it is organized under the present Constitution, and as I suppose this report of the Committee on the Judiciary organizes it, I do not know how it may be in different sections of the State, how other localities are affected, but in my own

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county we have not the highest regard for it. I do not regard it as much more than a justice's court except that, it has an inclosed jurisdiction in the trial of criminal cases. I believe that it is wise and politic, and that it will be convenient for the people, that we should make this court a respectable one, which now it is not. The organization of the court makes it a court of inferior jurisdiction, and it occasions the very difficulty which has been suggested by the gentleman from Onondaga [Mr. Andrews], that it does not call to the bench that class of lawyers who should preside over its deliberations, and that, if this court was a court with the jurisdiction which the amendment proposes to make it, it would call to its bench a man competent to the discharge of its duties. The court, as it is now organized, is simply a criminal court, with no original jurisdiction. It is neither more nor less than an enlarged court, a justice of the peace It is not such a court as should be organized to administer the criminal law of the county. In regard to the enlargement of the jurisdiction in civil cases, there are a great many cases which suitors do not choose to bring before justices of the peace, which should be brought before a court of higher sanctity and more responsibility than a justice's court. This court is intermediate between the justice's and the supreme court, for the trial of such cases, and in my judgment it should be so organized that it shall have original civil jurisdiction in that class of cases, limiting the jurisdiction to an amount, say, of a thousand dollars. Then we should have a court which, in my judgment, will relieve the supreme court from a large class of cases that now come upon its calendar. The gentleman from Onondaga says that counties are not burdened with that class of litigations which the organization of this court will embrace. I submit to him that he is in error in this regard. I do not know how it may be with his county, but in my county I know it is eminently true that the calendar of our circuit court is lumbered up with cases which ought, by constitutional provision, to be limited to the lower court. There is now a large class of cases upon that calendar which cannot be reached or tried for the reason that it is lumbered up with those cases which ought to be disposed of in a court of a more limited jurisdiction than the supreme court. Now, as to the expense of this court, I do not see that any larger cost is to be entailed upon the county by this court, with its enlarged jurisdiction, than we now have, except the simple expense of running the court. Because it has its jury, it has all its attendants, it has in every other respect the same expense precisely that will be incurred by that court with the enlarged jurisdiction, except the time which the court will be obliged to sit to dispose of this class of cases. Take this class of cases, of assault and battery, of *crim. con.*, and the other classes that are designated by the amendment of the gentleman from Washington [Mr. C. L. Allen], and the class of cases that are limited, where the amount of damages claimed is not over one thousand dollars; I say it is entirely proper to limit those to a court of this kind, for a county, instead of lumbering the supreme court with that class of cases. It is a saving of money. It is economy on the part of the people, and it will elevate this county court to a degree of respectability which it ought to have to try cases of the character which are now committed to it. There are tried in the county court, as it is at present organized, a class of cases, in which men charged with crime may be sent to the State prison for the period of ten years. Will any lawyer in this Convention, or will any gentleman claim that that class of cases should be tried before men of inferior ability?—that they should not be tried before a judge who has all the legal attainments necessary to dispose of a question of that kind in the oyer and terminer? I trust not. And that class of cases must be tried before this court. Let us give this court that jurisdiction which will raise it up to the standard of respectability which it is entitled to, and confer upon it a jurisdiction of this kind, and it will be a respectable and decent court, which I claim it is not now, in certain counties, at all events.

Mr. A. J. PARKER—I cannot agree with my friend from Ontario [Mr. Chesebro], or my friend from Washington [Mr. C. L. Allen] in the amendments that they propose. I believe it is better that we should adhere to the report made by the committee. The committee proposes to leave it to the Legislature to confer such original and appellate jurisdiction upon the county judge as it may think proper. It seems to me that we had better leave it there. At present, certainly, there is no necessity whatever for giving county courts the extensive jurisdiction that is here proposed. The circuit courts are abundantly competent now to try all these causes. Nothing will be gained by the suitors or by the public in organizing another court of equal jurisdiction that may try such causes, and have two courts in each county of concurrent jurisdiction in regard to them. Certain it is, Mr. Chairman, that the judges of the supreme court are abundantly competent now to keep all the calendars of the circuit in the State clear. Indeed, I believe if one supreme court judge was withdrawn from each district, and there were but three left they would be abundantly competent to hold all the circuits and to discharge all the duties at general and special term. I have no doubt of it. I think the labors that are devolved upon them now, with four in a district, a greater number by four in the State than there has been under the present Constitution, where four are constantly serving in the court of appeals—

Mr. CHESEBRO—Will the gentleman allow me one moment? We have an organization of the supreme court in one district consisting of four gentlemen who, I do not think will compare illy with any other four in the State in any other district, and that calendar to-day stands with seventy causes upon it; and after two weeks of work by one of the most diligent judges in that district, we did not reach the number of thirty-five at the last circuit.

Mr. A. J. PARKER—I think the gentleman from Ontario [Mr. Chesebro] will find that that is an exceptional case. If after working two weeks at the circuit they have gone one-half through

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the calendar, let them stay two weeks more and finish the calendar. There is time enough. There are weeks enough in the year, and there are four judges in the district and but two circuits to be held in each county in the year. Why should jurisdiction be given to the county court? Is it not just as easy for suitors to go to the circuit with a cause and try it there? Have they not more confidence in the supreme court judge that will hold the circuit than they will have in any county judge that will be likely to be chosen? Is it not just as important in these cases enumerated here — seduction, false imprisonment, breach of promise, *crim. con.*, libel and slander — that the law questions involved should have a trial before a judge of the highest capacity as it is that any other cause should be so tried? Are not the parties more likely to be satisfied in those cases with a trial at the circuit than they would be with a trial at the county court? This multiplying of courts of original jurisdiction in a county is a great evil of itself. It is far better that there should be but one court of original jurisdiction in each county to hear all these cases. Let that court be held as often as is necessary to decide them, and let it sit long enough to keep the calendar clear. It is an irritation to the people to call them out so frequently for the sake of attending a double set of courts as jurymen, as witnesses, as parties, or as counsel. No good is accomplished. On the contrary, a great evil comes from it. I do not believe in the necessity at all for any thing of this kind. It destroys the simplicity of the system. It increases expense and trouble. I do not see what is to be gained. And, is it not enough that we leave this to the Legislature, that we give them power to give original jurisdiction to the county court if they find it expedient? If, hereafter, before another Constitutional Convention shall meet, it shall be found that the judges cannot keep the calendar clear, or that any great public benefit is to be attained by giving concurrent jurisdiction to another court, it will be time enough then for the Legislature to consider whether it will be wise to give it to the county judge. I prefer, Mr. Chairman, the report as made by the committee; but I differ with them in one thing. I think that four years, for which we have elected our county judge, is enough; and if such an amendment is offered I shall certainly vote for it in preference to seven years, as provided in this report.

Mr. McDONALD—I am in favor of the amendment offered, for these reasons: In the county in which I reside, instead of there being a calendar of seventy at the last circuit, there was a calendar of about one hundred and thirty, and only twenty-five of the cases were reached. In Monroe county there is a calendar of three or four hundred, and it takes two years to reach a cause. In Steuben county they have now, I believe, four circuits by the new arrangement, and there, I understand, they always have a calendar of one hundred and thirty or one hundred and fifty causes. And the fact that throughout the State the calendar of the supreme court is at most circuits so large that no cause can be reached in the course of two years is too well known by the lawyers of this Convention to require further reference. Take our present system. How is it? We have, by the mode of re-trial, in cases involving not over two hundred dollars, any number of trials in the county court, and by the change thus made by the Legislature, there are frequent civil trials in such cases in the shape of re-trials of cases tried in justices' courts. And no one complains of that. It does seem to me, therefore, that we should relieve the supreme court. I doubt whether there is a lawyer here who is not actually in favor of increasing the jurisdiction of the county courts. The only question is, whether, we shall leave it to the Legislature to do it or do it ourselves. If that be so, I submit as far as we are satisfied it is right, that we should go on and do it ourselves, and where we have any doubt leave it over to the Legislature. Has any one any doubt but that actions of *crim. con.*, or civil actions of assault and battery, or slander, and all such actions which take up so much time, the case should be sent to the county court, or rather that the person shall have the liberty, if he desires it, to bring his action in that court? He has liberty to go to the supreme court. And in answer to the gentleman from Albany [Mr. A. J. Parker], I would suggest that the amendment of the gentleman from Onondaga [Mr. Comstock] relieves all that, because, if one party brings an action in the county court which the other party thinks should go to the supreme court, under the amendment of the gentleman from Onondaga [Mr. Comstock], if he can show any good reason it will go there, and in that way we will get justice. The mere freak that either party wishes to take it to the supreme court is no reason that it should go there; but if there be any good reason it will go there. It, therefore, seems to me that this amendment should be adopted. I hardly think there is a member of this Convention who does not believe that the administration of justice in this State would be expedited if this were allowed. If a person does not wish to go into the county court he need not go there. He can still go to the supreme court; and if he does wish to go there he can go there. There is another reason that has been stated, and that is that the county court will thereby acquire some respectability with regard to its position. Now, except as to criminal matters, it has no jurisdiction that would even make it respectable; and the result is, that, those men of the best ability, and who have an extensive practice, usually care not to be elected to a county court; but give it an increased jurisdiction, and you will be able to control the best ability there is in the county, and have a much better court. For those reasons, I shall favor the amendment.

Mr. SPENCER—The gentleman from Ontario [Mr. McDonald] has not correctly stated the condition of the legal business in the county of Steuben. I believe it is true, that there has not been a term of the court in that county for the last two or three years in which all of the business has not been disposed of which was ready to be disposed of. I cannot myself see any reason for selecting a certain class of cases for the purpose, in those cases, of conferring original jurisdiction

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upon the county courts. There is no more reason why the county court should have authority to try a case of assault and battery than a case arising out of a horse trade. Perhaps one may be just as important as the other. But I have a suggestion to make which may perhaps meet the views both of those who desire to retain the section, as it is retained by the committee, and those who desire to attain the object sought for by the gentleman from Washington [Mr. C. L. Allen]. The largest portion of the calendars of the State, undoubtedly, are so situated that the supreme court can readily dispose of all the business which arises in those counties at the circuit. There are a few counties, like the county of Ontario, in which they cannot or do not at all times so readily dispose of the business. I propose, therefore, if this amendment shall be voted down, to offer an amendment by which it shall be in the power of the Legislature to confer upon any county court such original jurisdiction as may be desirable, leaving the authority in respect to other counties as it now is; so that, if it is desired in the county of Ontario to have a county court which shall dispose of the business which the supreme court is inadequate to do, the county of Yates, or some other small county which has not the same difficulty, may have all its business done in the supreme court.

Mr. CHESEBRO—May I be allowed to make a suggestion? I know I have already spoken once on this question.

The CHAIRMAN—If there is no objection the gentleman can proceed.

No objection was offered.

Mr. CHESEBRO—I desire simply to make one or two remarks upon the question. The objection I have to the suggestion of my friend from Steuben [Mr. Spencer] is this: I think it is eminently proper for us, in forming a court in the Constitution, that it shall be uniform throughout the State, whether it is a justice's court, a county court, a supreme court or a court of appeals; and the idea of leaving to the Legislature the power of conferring original jurisdiction upon the court of any one county is something which is novel, at all events, if not extraordinary; and I do not think we ought to confer that power upon the Legislature. Our duty is to organize a court; and suitors are not compelled to bring their actions in that court at all. The amendment offered by the gentleman from Washington [Mr. C. L. Allen] as amended by my amendment and by the amendment of the gentleman from Onondaga [Mr. Comstock] does not compel a suitor to bring an action in the county court at all. He may bring it in the supreme court; or, if it is brought in the county court by the plaintiff, under the amendment offered by the gentleman from Onondaga [Mr. Comstock] it may be removed, by such process as may be directed by the Legislature, into the supreme court. Therefore there will not necessarily be any lumbering up of the county court, and no compulsion upon the suitor to bring his action in that court. Suitors may bring their actions where they please. I see no necessity whatever for the amendment proposed by the gentleman from Steuben [Mr. Spencer]. I hope the amendment of the gentleman from Washington [Mr. C. L. Allen] as amended will be adopted.

Mr. COOKE—Is an amendment in order?

The CHAIRMAN—It is.

Mr. COOKE—I move to strike out the words "false imprisonment, breach of promise of marriage, seduction and criminal conversation." I had the honor some time before the adjournment, to submit a proposition for extending original jurisdiction to county courts in four actions: assault and battery, malicious prosecution, libel and slander. My object in doing that was this: I had no very great anticipations for the county courts, that we should be able to organize. I presume I have about the same appreciation of those courts as the gentlemen who have preceded me. We have some very fair, respectable courts, and in many counties we have very indifferent ones, and I think it would be entirely unwise to intrust them with a very enlarged jurisdiction. The four actions that I have named generally involved no difficult questions of law. The rules that govern an action of malicious prosecution are very simple, and the same is the case with libel and slander, and simple assault and battery. A justice of the peace, for that matter, might be safely intrusted with the jurisdiction to try that class of cases. The damages generally are not very exorbitant, no very great sum is involved. Before offering my resolution upon this subject, I had considered the other actions that are contained in the amendment of the gentleman from Washington [Mr. C. L. Allen]. It occurred to me that the action, for instance, of false imprisonment, sometimes involves very grave constitutional questions. I believe it is within the knowledge of every gentleman on this floor, that latterly, within a few years past, the action of false imprisonment has been used to obtain redress for some very serious alleged wrongs; and those actions involve, in many instances, constitutional questions. Now, in regard to actions for breach of promise, seduction and *crim. con.*, those are cases that excite a good deal of feeling, a great deal of passion in localities, and involve reputation, involve the highest interests for which our citizens go to law. It does seem to me, sir, that those actions ought not to be given to county courts. It seems to be eminently proper that those cases should be required to be brought in the supreme court. In many cases a change of venue becomes necessary for the promotion of justice, to prevent a verdict as the result of passion and excitement. The amendment of the gentleman from Onondaga [Mr. Comstock], it is true, has to some extent relieved the proposition from that objection; and yet they generally involve a large amount in money; and if these actions are to be specified as proper matters to be submitted to a county court, I do not know where we can stop. I think there is a great deal of force in the remarks of the gentleman from Onondaga [Mr. Andrews], that this matter, after all, had better be left to the Legislature. There are many cases that we cannot anticipate now; new actions are given, as statutes are passed for the enforcement of individual rights, perfectly competent for the Legislature in their wisdom to submit to the jurisdiction of county courts. Those

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we cannot anticipate. I think it would be better, on the whole, to leave the subject in the hands of the Legislature. Let them confer such jurisdiction as in their wisdom they shall think best from time to time, and having reference to the experience and the fitness of the court. This is the same question that we have had before us from time to time, a question whether we shall petrify our policy in the Constitution, whether we shall take those causes and place them under constitutional protection, or whether we shall leave the Legislature to do with them what they shall think best from time to time, as their wisdom shall dictate.

Mr. BECKWITH—I am in favor of the provision as it stands reported by the majority of the committee. I think it wise to leave this matter to the Legislature; and I have no doubt, from past experience in this State, that the Legislature will confer additional original jurisdiction on the county courts. In regard to the county court in my county, we have had a good court as a general fact; a court as competent to try many of these matters as our supreme court judges. I think it unwise to introduce into the Constitution matters which are purely legislative. Provide for the establishment of a county court and then give to the Legislature power to confer original jurisdiction of many matters now triable in the supreme court. I would like, however, to have a provision introduced into the Constitution that parties may remove a cause in which the county court has original jurisdiction into the supreme court; and I would like to see that provision introduced into the Constitution in regard to the superior court and the court of common pleas of the city of New York. I have known of individuals, living in remote parts of the State, going to the city of New York and there being sued in the superior court when the cause of action originated and the witnesses mostly resided in a remote part of the State, and the venue could not be changed so as to have a trial where the cause of action arose and where the witnesses mainly resided. And I hope such a provision will yet be introduced in regard to those courts. The supreme court will have sufficient judicial force to discharge all the duties necessary to dispose of the litigation in this State. The fourth judicial district, in which I reside, extends from the southern boundaries of Schenectady to the Canada line. It extends from the eastern boundaries of the State to the St. Lawrence river—a territory larger than the State of Vermont. It has a population larger than the population of Vermont, and yet it has only four supreme court judges—a judicial force not equal to that of the State of Vermont. I doubt not that there is as much litigation and as much necessary law business done in that district as in the State of Vermont, and yet we have not the judicial force which that State has. I think myself that it would be well to leave to the Legislature authority to confer on the county courts original jurisdiction, and I have no doubt that the Legislature will exercise that authority judiciously. It will relieve to a very great extent the labors of the supreme court. Many actions now brought in the supreme court would be brought in that court, and if there is power to remove them from that court into the supreme court no injustice can be done. I trust, therefore, that the matter will rest as it is, and I think that gentlemen need have no fear that the Legislature will not provide for conferring original jurisdiction on the county courts, because we know they have attempted to do it in a great many instances since the adoption of the Constitution of 1846, and their action has been decided to be unconstitutional in many instances. I choose to leave it there because I think the Legislature will confer the proper power on the county courts, and I think there is no danger but what they will exercise it.

Mr. C. L. ALLEN—My object in offering my amendment is to place it beyond a doubt that county courts shall have jurisdiction in the cases I have enumerated; and I have endeavored to give my reasons. I think it would be a great relief to the circuit courts, and aid the judges in the trial of more important causes, which are now delayed by the vast amount of business required to be done in this State and constantly accumulating before them. This would not be legislating, as my friend from Clinton [Mr. Beckwith], or some other gentleman, has remarked; it would not be legislating in the true sense and meaning of that term, to specify this class of cases over which the county courts should have jurisdiction. I do not propose to legislate in this amendment. I do not propose to detail in what manner these courts should be organized, or how their plans should be regulated, or any thing of that kind. I leave that to the Legislature, in my amendment. That is properly legislative duty and that would be trenching on their duties. What I propose in my amendment is simply to specify the class of cases in which the county courts should have jurisdiction. Is there any more legislation in that than in creating the circuit and supreme court and declaring that they shall have jurisdiction in civil actions? Not a particle. It is only changing from one tribunal to another and declaring that the inferior tribunal shall have jurisdiction in the particular class of cases which I have enumerated. My friend from Albany [Mr. A. J. Parker] has said that the supreme and circuit courts, as they would be constituted by this Convention, would be capable of doing all the business that would come before them. That was the argument made in the Convention of 1846, that the court as constituted then would be sufficient to do all the business. That experiment has been fully tried. It has been tried since that Constitution went into operation, and it has proved to be almost a total failure. I have already enumerated the time that has been spent in the circuits of my own county and my own district, in the trial of these petty causes, which might as well be tried in the county courts. I know there have been important cases that have gone over circuit after circuit, year after year in the county of Washington alone, and remained untried, because they had to give place to inferior actions, on account of superiority of age or place before them on the calendar. One word in regard to my friend from Ulster [Mr. Cooke]. His amendment provides that

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some of the classes of cases which I have enumerated shall be stricken from the list. He once proposed himself that four of these classes of cases should be conferred by the Constitution upon the county courts. I added the three others which are contained in my amendment. Now, the gentleman says that those are important actions. There is no doubt but they are. Breach of promise of marriage is generally considered an important action, and yet I have known such cases to be tried in a justice's court. They may as well be tried in a county court as a justice's court, and so with the other actions which the gentleman has enumerated. Therefore there is no impropriety in that, though there may sometimes be an aggravated case, calling upon the jury to award a large sum in damages. A jury is as capable of awarding a large sum in damages in a county court as in a circuit court, or a court of common pleas. With all due deference to my friend from Ulster [Mr. Cooke], I think the addition of these other classes of cases, which I enumerated, would be very proper, and the higher courts would be greatly relieved by the authority conferred upon the county courts. I do not want any delay in this matter. I do not want to leave it to the Legislature. The Legislature may not deem it expedient. The same argument may be used there which my friend from Albany [Mr. A. J. Parker] has made use of, and in which he has endeavored to show that the circuit courts were competent to do the business. The gentleman said if the judge could not finish the business in one week he might prolong his session into the second or third week until it was done. But my friend did not remember that oftentimes these justices are under the necessity of going elsewhere to hold circuits in other counties; and sometimes they are obliged to go to the general term. Their time is taken up in a variety of ways, and they have not time to prolong their sessions. The reason why Judge Rosekrans could not sit longer in our county than for the trial of three causes at the last circuit was that he was under the necessity of attending on the next Monday a general term in the county of St. Lawrence. They cannot get time enough to finish their calendars in the large counties. I know that to be the case. The causes remain untried, term after term, and I appeal to gentlemen from different parts of the State if this is not their experience in regard to the calendars being overloaded by actions of this kind. I trust, therefore, that the amendment which I have presented will prevail.

Mr. COMSTOCK—In offering the amendment which I proposed, qualifying somewhat the force of the amendment offered by the gentleman from Washington [Mr. C. L. Allen], I did not intend to be understood as being in favor of the amendment even with the qualification. I offered my proposition in order to make what had been proposed by another more endurable. I will say a word or two upon the general question. I have always considered it one of the greatest defects of the Constitution of 1846 that it took from the Legislature the power of conferring what is called original common law jurisdiction upon the county courts. I doubt whether that error was in the Constitution. I doubt whether it was not a mere judicial error in construing the Constitution. I know very well that the court of last resort in this State, at a somewhat early day, pronounced a decision declaring that the county courts could not take this original common law jurisdiction even under a grant by the legislative power. I never thought it was necessary to make that decision, but it was made, and it has never been overruled. Hence I think the necessity of some change in the Constitution. I am as sensible as any one can be of the importance of raising up the dignity and the functions of the county court. I think they may be very much elevated and improved by the addition of a jurisdiction which they do not now take, and which they cannot now take. It is true that there are jurisdictions conferred upon the justices of the peace, in a variety of cases, which the county courts, certainly far above them in intelligence, cannot take under the Constitution. I certainly agree, therefore, to the necessity of some improvement in the organic law in this respect. But, at the same time, I am conscious of the danger of undertaking to crystalize this jurisdiction by inflexible provisions of the organic law. And the best result to which my reflections upon this subject lead me is, that, it is safe, on the whole, to leave the Legislature to confer this jurisdiction under such wise limitations as it may think proper to impose. I shall therefore vote against the amendment, even in the form in which it now is, and to sustain the report of the committee.

The question was put on the adoption of the amendment offered by Mr. Cooke, and it was declared lost.

The question recurred on the amendment offered by Mr. C. L. Allen.

Mr. CHESEBRO — In order to make the amendment that I have suggested intelligible, it seems to me that that part of the amendment proposed by the gentleman from Washington [Mr. C. L. Allen] which provides for jurisdiction beyond the class of cases that he names should be stricken out, because that is covered by the amendment which I propose. Of course there should be left the appellate jurisdiction, which is provided by his amendment. But the conferring of any original jurisdiction is all covered by the amendment proposed by myself.

Mr. C. L. ALLEN—I do not know but what it is.

Mr. CHESEBRO—The design of the whole thing as amended, is that the county courts shall have original jurisdiction in the classes of cases other than those mentioned by the amendment of the gentleman from Washington [Mr. C. L. Allen].

Mr. S. TOWNSEND—I hope the committee are not about to constitutionalize this matter by an enumeration of these cases to be heard in the county courts. I hope they will content themselves with conferring the power upon the Legislature, as proposed by the majority of the committee, as explained by the gentleman from Onondaga [Mr. Comstock], who intended to give the Legislature, by the terms of the section they presented, the right of conferring original jurisdiction upon the county courts, a power which

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by some very fine-spun decision, as I understand the gentleman from Onondaga to say, has been denied them, from a vague and improper construction of the existing Constitution. It may be that the language which the committee have adopted is not sufficiently explicit. If not, I would vote for any amendment which would convey the idea better: because a certainty in the original phraseology is better than a hundred constructions, however well intended or expressed such *dicta* of the courts may be. To my ears, the catalogue of crimes and cases that the proposed amendment embraces would sound much better in a treatise on medical jurisprudence. At least, many of the causes of action enumerated would seem more appropriate in a legislative statute, than in an organic law. I have been regretting that another and more important aspect of this matter was not presented by some gentleman upon this floor, which is, that, perhaps by giving more power and dignity, and stability to the county courts, we may conclude to revise what we have done in relation to our supreme court. We have adopted a supreme court of some thirty-two or more judges. Perhaps by giving sufficient power, and sufficient pay, either by the State or by a board of supervisors, or both, we may be able to draw into this county judicial office a higher class of men, even in the little county of Yates, because there must be men there competent for the situation, if we will give them sufficient inducement to accept the position. The same rule prevails here, undoubtedly, as in regard to coarser commodities than intellect and price, that if you create a demand and give the compensation, the supply will come. So, clearly, it is in the matter of integrity and intellect. If we will give the inducement, the men will not be wanting to fill these courts. I hope that aspect of the question will be taken into consideration by some of the professional gentlemen upon this floor. If we succeed in carrying out the express will and understood desire of the public at large, the electoral population of this State, to bring good law close home to them, are we going to take it over the county lines where they cannot reach it? We might possibly drop the supreme court to the extent in numbers we have known it, and constitute it as an appellate court, for this is really a supreme court under the name of a county court; and if we give these features to the county court, it may reduce largely the number of judges necessary for the supreme court. Perhaps ten or fifteen judges would be able to do all the appellate business that would be brought before them. Another query would arise, whether, with a court of that character, we might not be justified in dropping the court of appeals. Again, sir, we find that by the section here, which is also a section of the Constitution of 1846, the power is dropped of appointing any officer to do the surrogate business where there is a certain amount of population. It seems to me we should provide that these judicial officers in the smaller counties should attend to that duty; and, if we give that additional duty to this court, we may thereby reach a sufficient degree of inducement to give us a competent officer. This section is one of the most important sections in the whole article—although I am aware that has been declared of almost every section. I consider the Committee on the Judiciary as subject to some censure for not having introduced this in the first section of the article. In that respect they have been inartistic. We have been erecting the apex of a pyramid while the substratum has been entirely overlooked. This section provides for the duty of at least five thousand judicial officers of this State; and we have been spending days and weeks upon the subject of courts not employing over fifty officers. Admitting that the most important causes will be tried in the higher courts, such as great questions of constitutional law, involving as well deep principles of equity, we are not to be carried away by the idea that they are the only causes in which justice is to be done. We ought to pay attention to the interests of the masses of the people. It is of more consequence to the people at large to be able to get justice in the county courts than to have a good supreme court judge. There are occasional exceptions, but they only prove the general rule. Where they have good magistrates better order will be kept, and there will be a better state of morality; there will be less litigation and more respect paid to the laws. I have also expected during this discussion that another subject would be considered, allied to the one which is brought before us by the gentleman from Essex [Mr. Hale]. Although the report of the judiciary committee has been before us, as the sentiment of an imposing majority of this committee, their report was the result of compromise. I think all agree upon this. We want a uniformity of decisions in the courts; and the gentleman from Essex [Mr. Hale] has stated that, according to his reading of the debates of 1846, it was the intention of the framers of our present Constitution that it should be required by a law that the judges should intermingle, so to speak. A judge in New York should be familiar with the jurisprudence of Ontario, Oswego, or Kings. By intercommunication, whatever the defects of the old system, there is necessarily a degree of uniformity produced, and some coincidence of ideas; so that there would not be that danger from the conflict of the opinions in eight supreme courts, which we have heard stated. Another point is, and lest it should be overlooked, I consider it my duty to state, that the court of errors, under the old Constitution, partook largely of the lay element. That court was referred to continually, and without contradiction, in the last Convention, as one whose decisions were world-wide known, wherever the English language was spoken. And when the proposition was made that the judges of the supreme court should be confined to those having the degree of counselors at law, the bar upon that floor almost universally said that that would prevent the lay element from entering the court of appeals, that being in an analogy with the court of errors, whose decisions had been so much lauded. But I believe I am not wrong in saying that no layman has been even mentioned as judge at large of the court of appeals, and I do not suppose a man not technically informed could enter advantageously the supreme court at circuit. But the

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desire of the Convention, as shown in the debate, was that, among the four judges to be selected by the people at large, there should be some Stephen Allen, or Myndert Van Schaick, who, from his position in the Senate, was a member of that court, and whose knowledge of mercantile and business matters in detail, if not of legal questions, gave him a degree of eminence which the bar held in respect. This principle has been lost sight of entirely. It is a query whether it would not be well for us to retrace our steps in this regard. The amendment of the Constitution in 1846 was intended, in the reconstruction of the judicial article, to still provide for and retain this, but the provisions, in that respect, were never carried out, or apparently regarded, in the conventions that controlled our judicial nominations. Had it been so, and the presence of a representative of the lay element thus secured in the organization of our court of appeals, the business curtness of such minds, as I have mentioned, would have rested impatiently under the distressingly prolonged opinions that now lumber up the one hundred and fifty volumes which the libraries of such of the profession whose means permit contain, on their dusty, undisturbed shelves.

Mr. GRAVES—If I rightly understand this amendment, it is to give to the county courts the power to judge of some of the most important cases that are now tried in the circuit court. I am in favor of increasing the jurisdiction of the county courts, but I am not prepared, at this time, to vote in favor of this amendment for this reason: that the county court is to be organized anew under the Constitution which is to be made here, if it shall be adopted; and it is difficult for any of us now to forsee what that organization may be; whether it shall be an able court, whether the people shall take it upon themselves to select efficient men as county judges, or whether they shall regard it, as they now regard it, as of but little moment, and fail, therefore, to select the ablest and best men to fill those places. If, after this Constitution shall be adopted and after these judges shall be elected to fill those several places, the Legislature should then be satisfied that the people felt an interest in these courts, so much so that they selected able men whom they were disposed to clothe with power, it will then be time enough for the Legislature to confer upon them such jurisdiction as, in their judgment, the interests of the people demand. And they must certainly be able men to be competent and qualified to sit in judgment in the cases mentioned in the amendment. I am, therefore, opposed to the amendment, because I believe the eighteenth section clothes the Legislature with power sufficient to give all the additional jurisdiction which the exigency of the case may demand.

The question was put on the adoption of the first branch of the amendment of Mr. C. L. Allen, relative to the jurisdiction of the county court, and it was declared lost.

The question was then announced on the second branch of the amendment offered by Mr. C. L. Allen, relative to surrogates.

Mr. SPENCER—I would inquire if the amendment does not already provide for their continuing in office?

The CHAIRMAN—The Chair is of the opinion that it does not.

Mr. SPENCER—I think section 31 provides for the county judges.

Mr. C. L. ALLEN—I do not know but what the latter part of the amendment does. I merely wish to say in regard to the surrogate, that the report of the committee provides that the court shall accommodate a population of forty thousand. Where the population exceeds forty thousand the Legislature may pass a law creating the office of surrogate, though the article provides in the eighteenth section that the county judge shall perform the duties of surrogate. My idea is that in places where the population exceeds forty thousand the Legislature shall provide for the appointment of a surrogate. The county judge cannot always, and especially in a case of that kind, perform the duties of surrogate and those of county judge. I do not know why this office should be a separate and distinct one. Even now the Legislature is providing for extending the power and jurisdiction of the county courts. Then, in that event, the county judge will have nothing to do but perform the duties imposed upon him by the Legislature. This, I am told by my friends, they will do. If the Legislature will do it then the office of surrogate ought to be an independent office and the duties performed by a separate incumbent. Now, sir, a change in that provision is not called for by the people of this State, so far as I am aware. The surrogates' courts have jurisdiction over some very important matters, and their powers and duties are well understood by the people, and the people do not desire a change. Moreover, we know that most of the incumbents of that office were elected at the last election for the period of four years, and many competent and most deserving men were then re-elected, while some new men have been elected who are also entirely competent to do the duty, and I think it is but just that these incumbents should be continued in office. I will not dwell longer upon this matter at the present time. I have only felt it my duty to express my views, and to give the reasons why I have proposed this amendment in connection with the other.

Mr. C. E. PARKER—I ask to have that proposition divided, so that we may vote upon the first amendment separately.

The CHAIRMAN—That division will be made.

The question was put on the first part of the amendment to substitute the word "shall" for the word "may" in the sixteenth line, and it was declared lost.

Mr. HALE—If the gentleman from Washington [Mr. C. L. Allen] will allow me to make a suggestion, I would ask him whether the object of this amendment could not be better attained when we reach section 31, by inserting the word "surrogate" there? It would make the matter a little more symmetrical, and it would be more germane to that section than to this.

The CHAIRMAN—The Chair does not understand the gentleman from Washington [Mr. C. L. Allen], to withdraw the remainder of the amendment.

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The question was put on the second part of the amendment, to add after the word "judge" in nineteenth line, the words "and all surrogates in office when this Constitution shall take effect shall hold their respective offices until the expiration of the term for which they were respectively elected."

Mr. FULLER—I offer the following amendment: Strike out the word "it" in line seven, after the word "one or more counties;" so that the section will read: "The county court, in each county, shall be continued with such appellate jurisdiction as shall hereafter be conferred upon it, in any one or more counties."

The object of this amendment, as I stated before, is to give the Legislature power to discriminate in respect to bestowing this jurisdiction, so that in case the supreme court in any county should be burdened with more business than can be expeditiously disposed of, the Legislature may confer upon the county court of that county original jurisdiction in such a class of cases as may tend to relieve the circuit court of the burden upon it.

Mr. FULLER—I would suggest to the gentleman from Steuben [Mr. Spencer], that the words "one or more counties" would connect themselves with the word "continued."

Mr. SPENCER—I propose that the amendment shall modify the expression which follows it, rather than that which precedes it.

Mr. KETCHAM—I offer the following amendment:

"Strike out all after the word 'judge,' in line seven, to the word 'may,' in line eight. Strike out all after the word 'office,' in line thirteen, to and including the word 'treasury,' in line fifteen."

This amendment does away with the office of justice of the sessions simply. The gentleman from Washington [Mr. C. L. Allen] has pretty well illustrated the perfect uselessness of that office. I never knew an instance where those officers were consulted and influenced the decision of the court where they were not wrong. They are mere "figure-heads," and answer no purpose but to sit up there and look wise and draw their pay. [Laughter.] I have chosen to separate these propositions, and this proposition is simply to do away with the justices of the sessions as a useless appendage to the court.

Mr. BERGEN—I hope that amendment will not prevail. The court as organized at present, and as proposed to be organized, is composed chiefly of men who are members of the legal profession, and I am not at all surprised to find gentlemen of that profession anxious to have the court so organized as to give laymen no voice on any subject whatever. They desire to monopolize the whole business. [Laughter.] Now, sir, in my judgment, laymen are necessary upon the bench in criminal courts. At all events, in my life, although not a legal one, I have known instances where the first judge or presiding magistrate of a court was prejudiced, in consequence of which an unjust sentence would have been pronounced upon persons convicted of crime had it not been for the intervention of the laymen, checking the action of the judge in that matter. Cases of that kind do arise, not often but occasionally, and I believe that these assistant justices are necessary in such cases. I recollect one instance in the city of Brooklyn, some years ago, where some persons were tried and convicted of having committed some trivial offense, and the judge being prejudiced, would have sentenced them not only to a fine but to a long imprisonment, had it not been for a layman who sat on the bench beside him. I hope, Mr. Chairman, that for the prevention of injustice of this kind this provision will be retained. It is a time-honored one, and some years ago, instead of having two laymen on the bench, we used to have half a dozen. The provision as it now stands, being a salutary one, I hope it will be preserved.

Mr. CHESEBRO—I hope that this amendment will prevail, for, as I understand the amendment of the gentleman from Wayne [Mr. Ketcham], it is simply to strike out the provision for associate justices, as contained in the fifth section. Now, sir, so far as the objection that has been raised to this amendment is concerned, the gentleman will remember that the county judge sits with the justices of the supreme court as a constituent member of that court, so that there are two lawyers upon the oyer and terminer bench at all events, and if any difficulty of the kind suggested by the gentleman should arise, it would be settled by two gentleman of that class in whom he has so little confidence that he thinks they are not competent to pronounce a just sentence after the verdict has been given. But I insist that these two associate justices are mere useless appendages of this court, and that they may sometimes exercise a power which is prejudicial to the proper administration of justice; they may overrule the county judge on a question of law which may be of vital importance in the case. Now, if any body in this Convention can point out in what possible way these justices of the peace can be of any use to the county judge in the trial of a case, I would like to have him do so; but I believe they are useless, and that they ought to be abolished.

Mr. BICKFORD—I also hope that this amendment will prevail. I insist that the justices of the sessions are not simply useless, but that they are a positive nuisance. [Laughter.] In many cases they have been known to overrule the county judge, and in some cases even to overrule the circuit judge. Two, comparatively, ignorant justices of the peace from some backwoods town (and they generally select some inferior man for justices of the sessions because they want to pay those who have done the work—perhaps the dirty work of the party) will sometimes overrule the judge of the supreme court who is holding the circuit. I am informed of a recent case in the county of Jefferson, where a circuit judge was overruled by two justices of the sessions. On the question whether a trial should be put over, they determined that it should be put over, and because that was done, the criminal, as I understand, finally escaped justice. I repeat that these officers are no merely useless, but that they are a positive nuisance, and that they ought to be done away

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with. I remember an anecdote which will illustrate the only use of these associate justices. It was said that a circuit judge once requested an associate justice sitting beside him to scratch his back, and after he had done it the judge remarked, "Now I see what a side judge is good for, I never knew before." [Laughter.] And that is about all the side judges are good for.

Mr. WAKEMAN—I cannot concur with the gentlemen who have spoken upon this subject. It seems to me that these justices of the sessions or some other officers like them should be provided for in the Constitution. Take for instance a circuit judge who goes to a county where he is not acquainted with the local affairs, these side judges can render a great deal of assistance to him in a case to determine what punishment shall be given, by giving him information in reference to the character of the criminal and the general circumstances of the case. And there is another consideration: a circuit judge who has long been in the habit of trying criminals has not all the heart he had when he commenced, and I think that sometimes the side justices do good by softening down the sentence, and infusing more of mercy into it than there would be if it were left entirely to a single judge. Again, in our courts of oyer and terminer you could not very well provide for two judges, because there would not be any balance of power. The county judge, as said by the gentleman from Ontario [Mr. Chesebro], might sit in the court of oyer and terminer, and there would be two lawyers on the bench, but it would be necessary to provide for three, as to have a balance of power.

Mr. KETCHAM—Is not the court of oyer and terminer now composed of an equal number of judges—the circuit judge, the county judge, and associate justices—four in all?

Mr. WAKEMAN—Courts of oyer and terminer may be held so, but in point of fact they are not. In almost all the counties of this State the county judge is the acting surrogate of the county, and, except specially requested to do so, he does not generally sit in the court of oyer and terminer at all; and if you continue the provision that the county judge shall act as surrogate in any county where the population does not exceed forty thousand, he will have enough to do without sitting in the court of oyer and terminer. Then, again, there are many proceedings of a *quasi*-criminal character before the courts where it is necessary to have some additional judicial force beside the county judge. I do not see why this system has not worked well for the last twenty years. You have substituted these two judges in place of the four judges of the old court of common pleas who used to preside prior to 1846. You propose now to allow a single judge to try a cause—and in regard to that, I mean to say, where the presiding judge makes the rulings, they are generally acquiesced in by the whole court; but in matters of punishment and questions like these, whether a man should be tried or not, questions in regard to which the justices know more of the circumstances than the judge can, I think they are very valuable officers. Then, there comes before the sessions many cases in reference to such matters as compelling parents to maintain their children, or children their parents, cases of bastardy, etc.

Mr. CHESEBRO—I would like to ask the gentleman from Genesee [Mr. Wakeman] whether the whole court are not bound to pass upon those questions?

Mr. WAKEMAN—Undoubtedly they are. But I say that such cases are generally governed by the opinions of the local justices, and I venture to say that in nearly every case where they have overruled the county judge, they have been right. I never knew them to do it where it did not turn out that they were right and the county judge was wrong. I do not mean on mere questions of law, but on questions of plain common sense. I am not at all prepared to say, sir, that a county judge should be permitted to pass alone upon cases involving men's liberties and rights, particularly when the judge has been a good while on the bench, because then, as I have said, he is not apt to be so merciful as I think he should be.

Mr. HAND—I am in favor of this amendment. It has sometimes been a matter of amusement to me, as I have sat in court, to see these fellows sitting there and doing nothing. [Laughter.] If the system has worked well, it is because they have done nothing. [Laughter.] I have never known them to do any thing in our county. The county judge has gone on and performed his duty, and they have acquiesced, and therefore the system has worked harmoniously. [Laughter.] It works harmoniously while they continue to do nothing. But when they take it into their heads to overrule the county judge the effect, I think, must be disastrous. If such men undertake, by their mere numbers, to overrule the rulings of men of legal minds and legal capacity who have been placed in the judicial office because they have such capacities, the effect, I say, must be very bad.

Mr. GRAVES—I hope that this motion to strike out will not prevail. I regret very much to hear statements made here that the magistrates who have been associated with the county judges are mere ciphers in that court. Most of us know, of course, that the duties of magistrates who are associated with a county judge are criminal, or *quasi*-criminal. Their duties pertain to nothing else which is connected with the county courts. Now, sir, my experience is very different from the experience of gentlemen who have suggested their opinions to this committee. I have always found, in the administration of criminal law, a very great assistance from magistrates who have been associated with me in the discharge of my judicial duties. If the position taken here by gentlemen is a correct one, then why not devolve upon the county judge the entire trial of a cause? Why associate with him in the court a jury? It is because you want the judgments of other men. The jurors have the common sense by which to determine the innocence or guilt of the person charged; and when that is determined by the verdict of the jury, then there is another very important duty to perform—to ascertain the amount of punishment that shall be inflicted upon the offender. Now, it is true that legal and technical questions do necessarily sometimes arise to

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be passed upon by these justices, but they are men of good, practical common sense; they know that the liberties and rights of a fellow-being are at stake; they have heard the evidence; they know the extent of the crime that has been committed, and they can judge with some degree of propriety what should be the nature and extent of the punishment inflicted upon him. Sir, although I have a very high respect for judges who sit in judgment upon the liberties and rights of persons charged before them, I have a still higher respect for the sober, sound sense of the magistrates that are associated with them. And, sir, I believe there is very great danger in many cases in permitting a judge to sit alone and pass upon cases involving different degrees of crime, and therefore necessarily involving different degrees of punishment. In such cases the punishment is to be meted out, after consultation with these justices, by the application of the rules of common sense and the laws of humanity; and these men, governed by no technical rule, but exercising their good sense, come to the assistance and relief of the county judge in the discharge of his duties in a very large number of cases where he needs such assistance. I sincerely hope that this provision in the section will not be stricken out.

Mr. HARDENBURGH—I am not myself very anxious whether this amendment shall prevail or not, but I shall vote for it. I say I am not anxious, because I think really it is of very little use in the administration of the criminal side of our courts. There is only one view, in my judgment, that can be taken of this matter, and that has been indicated by the gentleman from Herkimer [Mr. Graves], who has just taken his seat. The use of this addition to the court is, in my judgment, very limited. This is my experience, and I think it is the experience of every lawyer here and of every layman who has ever attended the court of oyer and terminer. The use of these side judges is to tell the county judge, or more especially the circuit judge, who is the best fellow to be foreman of the grand jury. [Laughter.] After the side judges have performed this arduous duty, the trial proceeds. There sit the jury who are to determine the guilt or innocence of the prisoner. The prisoner is convicted, and then, I do agree with those gentlemen who desire to retain this provision, that sometimes it is useful for the judge, and especially for the circuit judge, to consult with these two men in respect to the measure of punishment to be meted out. Now, then, the only question we have to decide here is, is it necessary to have this appendage to that court for that purpose alone? I think not. I say that the district attorney himself, aside from the consideration that I will speak of in a moment, never has that blood in his heart that will lead him to refuse the ordinary and usual plea for mercy, if warranted by the circumstances of the case. That is natural; that is human nature. But aside from that, the counsel and if need be, these two local justices, although they are not upon the bench, may be appealed to to enlighten the court in regard to the circumstances of the case and the character of the criminal. When the court comes to pronounce sentence, the prisoner is called, and then any palliating considerations can be addressed to that tribunal by the persons I have indicated; and I do not think it necessary, for this reason alone, to append to the court two associate justices, who, judging from my experience, never take any part in the trial of causes. Hence I shall vote for the motion to strike out this provision.

Mr. FLAGLER—I am in favor of this amendment for the reason that if it be adopted it will dispense with ninety-nine judicial officers in each county of the State! This court, as now constituted, is a very formidable affair. It is made up of one unit and two ciphers on the right; and this, by all rules of computation, makes just a hundred judges. [Laughter.] Now, obviously, where we can make so large a saving, and so great a cutting down of office holders, we should not forego the opportunity. The popular, and, I believe, the correct idea is that these so called side judges are entirely useless. They may sometimes overrule the opinion of a competent judge, and where they do, it is to the public detriment. I hope to see the good sense of this Convention brought to bear on the adoption of the amendment now pending.

Mr. HALE—I rise to express my astonishment that the gentleman from Broome [Mr. Hand], who, only two or three days ago, took occasion to publicly thank God that he was not a lawyer, should be now in favor of taking away the lay element which now enters into the composition of the court of oyer and terminer, in this State. I supposed from the very contemptuous opinion which he expressed of the lawyers of this body, and of the profession generally, that he would be violently opposed to any proposition which looked to leaving the entire control of the administration of criminal justice of this State to members of that profession. A friend on my left suggests that the gentleman from Broome may consider that the county judges are not lawyers enough to hurt [laughter], but I do not think that is the idea of the gentleman, because it is well known that some of the best lawyers in the State—if it is proper to use the adjective *best* in relation to any member of the profession—occupy the position of county judges. Now, I do not think it would be policy for us to decide to abolish the office of justice of the sessions. I do not, myself, think that, in most cases, those members of the court are the most useful in the world; but, as has been mentioned by the gentleman from Herkimer [Mr. Graves], who has had experience as a county judge, and as has been mentioned by other gentlemen on this floor, there are cases in which the advice of those justices is of some value. I think we have all seen that, in this matter of sentencing prisoners, and in various matters which come before the courts which are not strictly questions of law, the advice of these members of the court who are generally considered the ornamental portion, [laughter], is really of some value. And it is not a very expensive luxury for this State to indulge in. I do not think that any county feels very much oppressed by the amount paid to these judicial officers, and therefore for this and the other

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reasons I have stated, I am inclined to think that it will be unwise for us to say that there shall be no lay members of our criminal courts henceforth.

Mr. S. TOWNSEND—I hope the amendment will be voted down, and the section as it is presented by the Judiciary Committee will be retained. If there were no other reasons, I think the one given by my friend from Ulster [Mr. Hardenburgh] in the beginning of his remarks, would be sufficient to justify the retention of these officers. I understood him to say that the court always consulted these side judges in determining who should be the foreman of the grand jury. Now, sir, the little experience I have had upon grand juries, has taught me that this is a very important matter, and that upon the solution of the question, whether you are to have a business man as foreman of the grand jury, or a nonentity, depends in great measure the efficiency of the whole body. I think, sir, that this item mentioned by the gentleman from Ulster [Mr. Hardenburgh] is by no means a trifling one. Now, these justices, as a rule, represent the highest average of ability among justices of the peace in any county, and gentlemen should remember that any remarks which they make in regard to these justices, or any imputations they cast upon their character, must disseminate themselves upon the whole mass of five thousand justices of the peace in the State and that these justices are pretty active politicians, pretty active at the polls, pretty influential even in the making of judicial nominations [laughter], although I think that is a matter that could be better managed by the bar. Again, these side justices are associated with the county judges as excise commissioners. We all know that the duties of that office are very important, and that the way in which they are exercised, and the manner in which the commissioners choose to grant licenses, and to whom they grant them, has much to do with the morality of the county. I think also, sir, that there is something in what the gentleman from Genesee [Mr. Wakeman] says in regard to those side judges having a tendency to moderate the rigidity and severity of the circuit judge. I think, on the whole, that we had better retain this provision as reported by the Judiciary Committee, and I hope the amendment will not prevail.

The question was put on the amendment of Mr. Ketcham and it was declared lost.

Mr. WALES—I move to amend by striking out the word "seven" in the third line, and inserting "four."

Mr. COOKE—I rise to inquire of this committee whether it is necessary to enlarge the tenure of office of county judges. Is there any thing in their qualifications, or in their positions, that should require their term of office to be extended to seven years. My own judgment is that four years is sufficient. I do not expect to get the very best men for this position. I believe that the idea has been already put forward to-night, that it is hardly expected that we shall get the first talent for our county judges, as a general thing; and it seems to me a matter of very questionable policy, to extend this term of office. I myself am opposed to it.

The question was put on the motion of Mr. Wales, and it was declared carried.

Mr. KETCHAM—I move to substitute the word "law" for the words "board of supervisors" in the second line. I wish to make only a single suggestion in regard to this subject. I believe that by the Constitution of 1846 the compensation of the county judges was left to be provided for by law. If I am not mistaken the Legislature provided that the board of supervisors of the several counties should fix the salaries of the judges, and I really hope that we shall not go to tying that up any more strongly than it was tied up then. I may illustrate my reason for offering this amendment by mentioning one instance. I know a county of this State with over 50,000 inhabitants, where the salary of the county judge, who is one of the best lawyers in the county and as good as any in that part of the State, came near being fixed at first by the board of supervisors at three hundred dollars. This was done partly because they did not appreciate the labor attending the discharge of the duties of the office, and partly because they happened to differ with the judge in politics. The judge and the board of supervisors differed politically, and that consideration, as was very evident, entered into the action of the supervisors in this matter. Now there is that tendency on the part of these boards to fix the salary low where the judge is opposed to them in politics, and in the case that I speak of, if it had not been for the earnest efforts of the members of the bar, the salary would have been left at a sum, in a county of 50,000 inhabitants, so wholly inadequate as to preclude the possibility of any respectable lawyer holding the office and maintain any show of dignity. I think that the Legislature should be allowed to fix the salary, or at least left to say whether the board of supervisors should do it.

Mr. COMSTOCK—I would inquire whether this amendment takes the power away from the board of supervisors?

Mr. KETCHAM—No, sir; it would not.

Mr. COMSTOCK—In my opinion this power should be taken away from the board of supervisors altogether. Certainly it is a power which should reside either in the Legislature or in the board of supervisors, and should be exercised by one of these bodies to the exclusion of the other. I think the salaries of county judges should be fixed by the Legislature, to be paid, however, by the counties. I do not mean by that, Mr. Chairman, that the Legislature should establish a uniform salary for all county judges in the State, but that they should establish the salaries of the judges by law, the amounts to be graduated and regulated according to the population of the different counties. My idea is that a general law should be passed, declaring what the salaries of the county judges should be, graduating them according to the population of the different counties. With that view I offer this amendment to the amendment: "The salaries of county judges shall be established by the Legislature to be paid by the several counties."

Mr. KETCHAM—I accept that amendment.

Mr. GRAVES—I hope this amendment will

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not prevail. We have a statute requiring the board of supervisors to look over the accounts of the county judge and surrogate, and a statute requiring him to submit his accounts to them annually to determine the amount of business that he does. They, therefore, can determine better than any other body can what amount of labor the judge has had to bestow upon his office. They are familiar with all the duties that he has to perform both as surrogate and county judge, and there is no other body of men so well qualified to judge of the value of his services as the board of supervisors, because he annually renders them under oath an account of all that he has done. It seems to me quite improper that the power should be taken from the supervisors and vested elsewhere, because they are best qualified to judge.

Mr. KETCHAM—I was mistaken in saying that my amendment leaves the matter as it was left under the Constitution of 1846. It stands now as it stood under the Constitution of 1846.

Mr. BERGEN—I hope, sir, that this power will not be taken away from the board of supervisors. As has been stated, they are the best judges in their own localities of what the services of these officers are worth. If you take away this power from the supervisors and give it to the Legislature, the effect will be to send a lobby from the county to the Legislature to operate, and have the salary fixed at the rate they desire. The salary of the county judge is a county charge, not a State charge. The supreme court is a State charge, and therefore the salary of its judges should be fixed by the Legislature; but the board of supervisors represent the county and are responsible to the people of the county who have to pay the salaries; and certainly they are the best judges of what the amount of the salary of the county judge should be. Those who have to pay the bills are better judges in the matter than those who are not at all interested. There is a provision here that the salary shall not be reduced during the term of service, so that although the board of supervisors may refuse to increase the salary of the judge, they have no power to reduce it.

Mr. KETCHAM—May they not, after the election, and before the county judge enters upon the duties of his office, fix the salary at a lower sum than it has been fixed at before?

Mr. BERGEN—As I understand it they cannot do that.

Mr. KETCHAM—There is nothing here to prevent their doing it.

Mr. BERGEN—Then if there is not, an amendment of that kind would be very proper; but I hold that the parties who have to pay the salary should have the right, through their direct representatives, to fix the amount, and not have it so that, if there should be a difference of opinion between the people of the county in regard to the judge's salary, and the incumbent's opinion of what it should be, both parties should run up to Albany and "lobby" here, to have it fixed according to their views. I do not think there is a county in this State in which justice will not be done to the county judge by the supervisors.

Mr. COMSTOCK—If there be no objection I would like to say a word or two in commendation of my proposition

The CHAIRMAN—There being no objection, the gentleman from Onondaga [Mr. Comstock] will proceed.

Mr. COMSTOCK—I would like to ask whether there is any good reason to be given why the salaries of the different county judges, residing in counties of the same population and business, should not be uniform. Now, they are entirely unequal in different parts of the State; and in contiguous counties, where the functions of the county judges are equally important, entirely different rates of compensation are established by these local boards. No good reason can be given for that.

Mr. HARDENBURGH—Under the Constitution as it now exists, and as I understand the scheme to be now, there are populations where there are two officers performing the duties of county judge and surrogate. How would my friends in such cases regulate this matter by the population?

Mr. COMSTOCK—An act of the Legislature probably would make a discrimination in such a case as that stated by my friend from Ulster [Mr. Hardenburgh]. What I insist upon and all that I insist upon is that, the Legislature should regulate the whole subject by laws operating uniformly in all parts of the State. Now, notwithstanding what has been said in regard to the wisdom of the supervisors, I am safe, in my own estimation, in saying that they do not possess but a very small part of the wisdom of mankind, nor any great share of magnanimity. They may be exceedingly competent to determine this matter of the salary of the county judge, but, after all, they are, in a sense, the worst tribunal or authority to which you can leave a subject of this kind. My object is to raise the character of these local courts. We are about to give them a jurisdiction which they have never possessed before. They are to discharge more important functions under this Constitution, if it be adopted, than they have ever been called upon to discharge. They may be made very important tribunals in the jurisprudence of this State, and, I think, the compensation of the judges should be regulated by law. The Legislature certainly cannot be deemed an inappropriate authority to make a law for all the counties of the State which shall operate equally and alike in every section of the State. I am satisfied that the proposition, if adopted, will do very much for the character of these courts and it is therefore that I make it.

Mr. HARDENBURGH—I shall vote for the amendment of the gentleman from Onondaga [Mr. Comstock], and the only reason that I cast my vote that way is on account of a difficulty suggested by another gentleman who has spoken upon this subject. The county judge and indeed the surrogate is elected under our law before the salary is fixed; and it is left in the power of this board of supervisors to absolutely legislate the county judge out of office, by giving him a salary of five dollars a year, should he happen to be of the opposite party and should the board see fit to do it. I shall vote to leave the power with the Legislature, trusting that they will devise some means by which the matter can be regulated, notwithstanding the objections that have been suggested.

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Mr. BERGEN—The gentleman from Ulster [Mr. Hardenburgh] states that it would be left within the power of the board of supervisors to legislate the judge out of office because of his politics. I would answer that by saying that, if the matter is left with the Legislature they will have the same power, if they choose to act in the same partisan spirit.

Mr. HARDENBURGH—The Legislature would not be apt to trouble themselves about the judge of each county.

Mr. GRAVES—I wish to make a suggestion.

The CHAIRMAN—The Chair must remind gentlemen of the rule, that one speech from one gentleman upon the same question is all that is in order, but if there be no objection the gentleman from Herkimer [Mr. Graves] may proceed.

Mr. GRAVES—I desire simply to say that the compensation fixed for the county judge is always fixed by the board of supervisors before he enters upon the duties of his office; therefore if he is not satisfied with the sum provided by the supervisors he is at liberty to decline to accept the position; but I have never known an instance when a man declined to take the amount fixed by the supervisors as the salary of the office.

The question was put on the amendment of Mr. Ketcham, as amended by Mr. Comstock, and it was declared lost.

Mr. KETCHAM—I now move to insert after the word "supervisors" the words "before his election," so that the salary may be fixed before the officer is elected.

The question was put on the amendment of Mr. Ketcham, and it was declared lost.

Mr. SMITH—I move that the committee do now rise and report progress.

The question was put on the motion of Mr. Smith, and it was declared lost.

Mr. GRAVES—I desire to insert the words "or increased," after the word diminish, in the twelfth line, so that it will read, "The county judge shall receive an annual salary, to be fixed by the supervisors, which shall not be diminished or increased during his term of office." The reasons which were assigned for preventing the increase of the salaries of the supreme court judges, it seems to me do not apply in the case of county judges. They are local officers. They do all their official business within the county, and at one particular place, and, therefore, there is no necessary variation in their expenditures, and there is not that necessity for leaving the amount of their salaries an open question, that there is in the case of the supreme court judges. If there should be such a radical change in the prices of the commodities of life for a local judge, as to justify the board of supervisors in increasing his salary, as it would be a local matter, and within the personal knowledge of the members of that board. I submit that there would be no difficulty in getting the increase; and I submit that they should also have the power to diminish as well as to increase the judge's salary. If this word "diminish" is to be continued in the section, I desire that these words, "or increased," shall also be put in; but if the word diminish be stricken out, I have no objection to leaving out these words also

Mr. HARDENBURGH—It was upon this particular portion of the section that I relied to relieve me from difficulties that have been suggested, and that were sought to be got rid of by the gentleman from Wayne [Mr. Ketcham], and by my friend from Onondaga [Mr. Comstock]. Now, there is the difficulty that has been suggested by myself and by another gentleman, namely, that these salaries are to be fixed for the first of January. The term of office of the county judge, has now been fixed at four years. That is a term short enough, so that the fluctuation in the cost of commodities of life cannot very much affect him, and I desire a provision made to guard against the evil of which I have already spoken, that, if the judge happen to be obnoxious to the political party to which the majority of the supervisors belong, they can fix his salary so low as to absolutely compel him to resign. Therefore it is, I think, that the wisdom of this committee is displayed in saying it was not to be diminished during his term, being only four years. The whole may resolve itself into this: that I will give you a little more salary rather than have you resign. For that reason I trust that this committee will retain the provision precisely as it is.

The question was put on the amendment of Mr. Graves, and it was declared lost.

Mr. KETCHAM—I move to strike out in the twentieth line, the words "in cities," and in the twenty-third line the words "such cities," so that it will leave the Legislature to provide inferior local courts for other places than cities simply. There are large villages that may not have as much as some of the smaller cities.

Mr. E. A. BROWN—Is an amendment in order?

The CHAIRMAN—It is, if it is germane to this amendment.

Mr. E. A. BROWN—I move to strike out all after the words "in cities," in the twentieth line to the close of the section. As I understand that section, if the city of Albany applies for a local court, the Legislature can organize it as they desire, and with one judge. The next year the city of Rochester may apply for a court and get three judges, or, it may be, in some other particular, different from the court at Albany. It seems to me that the second court should be like the first, and so should the others.

The question was put on the amendment of Mr. E. A. Brown, and, on a division, it was declared lost by a vote of 30 to 30.

A DELEGATE—There is no quorum voting.

The CHAIRMAN—Gentlemen will please vote.

Mr. VAN CAMPEN—I move that the committee do now rise and report progress.

The CHAIRMAN—The motion is not in order.

The question was again put on the amendment of Mr. E. A. Brown, and, on a division, it was declared carried by a vote of 44 to 36.

The question recurred on the amendment of Mr Ketcham as amended.

Mr. COOKE—I move to strike out the words "in cities" after the word "Legislature," in the first line.

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The question was put on the amendment of Mr. Cooke, and it was declared carried.

Mr. BAKER—If it is in order, I would like to propose the following amendment.

The SECRETARY read the amendment as follows:

Strike out all after the word "continued" in line 5, down to and including the word "Legislature" in the seventh line, and insert as follows: "And shall have original jurisdiction in all civil actions in which the amount claimed by either party in their pleadings shall not exceed the sum of one thousand dollars, and such jurisdiction in special proceedings and such appellate jurisdiction as the Legislature shall prescribe.

Mr. BAKER—It will be seen that the amendment includes the proposition substantially, although somewhat enlarged, of the amendment proposed by the gentleman from Washington [Mr. C. L. Allen]. The object is to fix in the Constitution the jurisdiction of the county court, and to extend the jurisdiction which may be exercised by that court. I am distrustful of leaving the matter to the Legislature to prescribe the jurisdiction. I think it is better that the Convention should fix it in the Constitution, so that, in future, the jurisdiction of the county court will not be in a constant state of fluctuation and change, which it will be, if the matter is left to the Legislature. It seems to me better to have stability and certainty. For that reason I submit this amendment, and if it does not get the support of this committee, I shall move it in Convention, and ask the ayes and noes upon it.

Mr. HARDENBURGH—I would like to ask the gentleman from Montgomery [Mr. Baker] how he fixes any thing by his amendment. The lawyer will put just exactly that amount in his pleadings. There is nothing accomplished, I insist upon it, by the proposition.

Mr. COOKE—I move that the committee do now rise and report progress.

The question was put on the motion of Mr. Cooke, and, on a division, it was declared lost, by a vote of 39 to 41.

The question was put on the amendment of Mr. Baker, and it was declared lost.

Mr. BERGEN—I move that the committee do now rise.

The question was put on the motion of Mr. Bergen, and it was declared lost.

There being no further amendment offered to the section, the SECRETARY read the nineteenth section, as follows:

SEC. 19. The county judge of any county may preside at courts of sessions or hold county courts in any other county (except the city and county of New York, and the county of Kings), when requested thereto by the county judge of said other county.

Mr. WILLIAMS—I move that the committee do now rise and report progress.

The question was put on the motion of Mr. Williams, and, on a division, it was declared lost, by a vote of 38 to 42.

There being no amendments offered to the section, the SECRETARY read the twentieth section as follows:

SEC. 20. The Legislature may, on application of the board of supervisors provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge and of surrogate in cases of their inability or of a vacancy, and to exercise such other powers in special cases as may be provided by law.

Mr. SILVESTER—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Silvester, and it was declared lost.

Mr. S. TOWNSEND—I should like to inquire of some member of the Judiciary Committee, how extensive may be the application of the word "inability?"

Mr. FOLGER—The section has been transcribed precisely as it exists in the Constitution of 1846. [Laughter.] The word has received no additional construction.

Mr. BICKFORD—I rise to a point of order. There is no question before the committee.

Mr. S. TOWNSEND—The question is on the adoption of the section. The gentleman [Mr. Bickford] is entirely out of order. [Laughter.]

The CHAIRMAN—The Chair holds that the point of order is well taken, there being no amendment proposed to the section.

Mr. S. TOWNSEND—The question is on the adoption of the section.

The CHAIRMAN—That is not the question.

Mr. S. TOWNSEND—Then I move to strike out the section. I hope this word "inability" may be considered by the committee as going far enough to contemplate a deficiency on the part of the judge of the county, that owing to the pressure of business he may be unable to discharge his duty, and another judge will have to be assigned. That interpretation is a fair one. If the chairman of the committee thinks the section will admit of such construction I will withdraw my motion.

Mr. HARDENBURGH—I renew the motion to strike out the twentieth section. By the eighteenth section, as now adopted by the committee, provision is made for the selection of a county judge, and in specified cases for the selection of a surrogate, where the population of a county exceeds forty thousand. In other parts of this judiciary article provision is made for the filling of vacancies by election in case of disability or death, or for some other cause the person selected by the people is not able to perform the duties of his office. While this provision of section 20 is in the Constitution of 1846, as suggested by the distinguished chairman of the Judiciary Committee [Mr. Folger], I cannot see the necessity for it. It provides that, on an application by the board of supervisors, the Legislature may provide for the election of two local officers in the county to discharge all other duties provided for in section 18. Until I see some reason for this section I must oppose it.

Mr. BICKFORD—In villages where there are lawyers some distance from the county seat, their local officers may be elected to discharge certain chamber duties devolving upon the county judge. They are a great convenience.

Mr. HARDENBURGH—I know of no portion of this State where special county judges are

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appointed. This was done some years ago, but I understand that they have all been abolished.

Mr. ANDREWS—If the gentleman will allow me, I will say that in Oneida and Oswego counties they have such courts.

Mr. HARDENBURGH—I am speaking of my own experience.

Mr. ANDREWS—There are fourteen such courts in the State, I believe.

Mr. FULLER—There are fifteen of these local officers appointed in different counties in this State now. And, as has been suggested by the gentleman from Jefferson [Mr. Bickford], they are a very great convenience to the profession in the way of performing chamber duties in those localities which are distant from the county seat. Take the county of Oneida, for instance. There is one of these local officers in the village of Rome, and he is very useful there. In my own county, there is one of these local officers. It has happened within the last month that the county judge was taken sick, and was unable to perform his duty, and the special judge took his place. It has happened once before within the last few years that the county judge was unable to perform his duties for some six months. They were performed during that time by the special judge.

Mr. HARDENBURGH—I will withdraw my motion.

Mr. HAND—I renew it. I think it is unnecessary, inasmuch as we have two judges in every county to take the place of the county judge when he is not able to attend to the duties of his office. Those associate justices perform all the duties, and it is not worth while to put the parties to the trouble of getting up a new board. Those justices, if we may believe gentlemen upon this floor, are abundantly able to perform those duties and help the judges out. It seems to me it would be a loss of time, and a great deal of trouble to get up a new board. This is all provided for. One word with reference to the gentleman from Essex [Mr. Hale]. I do not feel so bad toward lawyers as he seems to suppose. [Laughter.] I think there are lawyers who make very good county judges. [Laughter.] We have some very good lawyers in the place of my residence, and some of them have been elected justices of the peace; they tried for it and they succeeded. [Laughter.] I believe there are four justices from the legal profession in my county, and they make pretty good justices. [Laughter.] So I am not down on lawyers to the extent that the gentleman might think. I will withdraw my motion.

There being no further amendment offered to the section, the SECRETARY read section 21 as follows:

SEC. 21. The Legislature may reorganize the judicial departments and districts at the first session after the return of every enumeration under this Constitution, in the manner provided for in the — section of sixth article, and at no other time. But the Legislature shall not increase the number of the departments or of the districts.

There being no amendment offered to this section, the SECRETARY read section 22 as follows:

SEC. 22. The electors of the several towns shall, at their annual town meeting, and in such manner as the Legislature may direct, elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy, occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace and judges or justices of inferior courts, not of record, and their clerks, may be removed after due notice, and an opportunity of being heard in their defense by such county, city, or State courts, as may be prescribed by law for causes to be assigned in the order of removal.

Mr. KETCHAM—I move to insert after the word "years" in line four, "jurisdiction shall not exceed fifty dollars."

The question was put on the amendment of Mr. Ketcham, and it was declared lost.

Mr. COOKE—I offer the following substitute for the section,

The SECRETARY read the substitute as follows:

Justices courts of inferior jurisdiction, shall be established by law. Such courts shall have civil jurisdiction in actions for the recovery of money only, or for the recovery of specific personal property when the damages or the value of the property claimed shall not exceed fifty dollars. The justices chosen to hold such courts shall have such criminal jurisdiction as has heretofore been possessed by justices of the peace.

Mr. COOKE—I think the public sentiment of the country demands at our hands some restriction upon the jurisdiction of justices of the peace. It is really an inferior court in point of capacity, and although I do not feel disposed to go as far as my friend from Jefferson [Mr. Bickford] has, in saying that inferior men are generally selected for that position, yet we all know that it is a court that is not to be trusted with any very extensive jurisdiction. We have provided so far for a county court, and we have proposed to give that court original jurisdiction. We have provided a supreme court to do all the more important business. Now what use are we to make of a justice's court? I am inclined to think that it ought hardly to be ranked among courts. It should simply afford a means of settling little neighborhood difficulties that are of small amount and not worth being taken into court. It seems to me that we ought not to accord to it any higher functions than I propose to give it in this substitute. Leave it to the Legislature to organize this court; leave it to confer jurisdiction to the amount of fifty dollars in the simplest cases, and then to limit appeals from justices' courts to the county courts, if you please, and it will do more toward the relief of the appellate courts, it strikes me, than any thing we have yet done. Now what matters it. If gentlemen will take up the cases that arise in justices' courts and follow them through the appellate courts to where final judgment is obtained, they will find that the amount involved in the action bears no proportion to the amount of expense involved, not only to parties but to the State. The aggregate of justice that is obtained in these litigations before justices of the peace is far less than the aggregate of expense.

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Mr. BERGEN—I will call for the reading of the substitute in the first place.

The SECRETARY read as requested.

Mr. BERGEN—As I understand this amendment it would wipe out our present system of four justices of the peace for each town. Perhaps I misunderstand it, but that is my impression. Now, sir, this system has been in operation in this State for a great many years, and I believe it has given general satisfaction to the people.

Mr. COOKE—If the gentleman will allow me, I will say it leaves the Legislature to organize justices' courts in the different town and counties. They may assign just such a number of justices as they think sufficient.

Mr. BERGEN—It leaves it to the Legislature to abolish the present system which has been in operation for years, and which has operated, at all events in my vicinity, satisfactorily. We have not had with us, as the gentleman from Jefferson [Mr. Bickford] says, inferior men elevated to the office of justice of the peace. We are in the habit of electing some of our best citizens. I am sorry to hear that in some portions of the State, the office is so degraded that inferior men are elected.

Mr. BICKFORD—I used no such expression, neither did I use the expression attributed to me by the gentleman from Ulster [Mr. Cooke]. I said nothing about justices of the peace. I said justices of sessions were rather inferior; that they were not good specimens of justices of the peace.

Mr. BERGEN—I think the gentleman has not mended the matter by his explanation. Justices of sessions are justices of peace elected by the county from among the justices elected by the towns.

Mr. BICKFORD—They are not good specimens of justices of the peace.

Mr. BERGEN—The people of the county of Jefferson must have very bad judgment or perverted choice if they elect the worst specimens for their justices. It is not the custom with us. We generally elect the best specimens. I believe it wise to "let well enough alone." Under the last Constitution, as also under the Constitution of 1821, we made these justices Constitutional officers, and scattered them through each town for the convenience of the people. There are a great many duties which they perform outside of their judicial duties. They are made commissioners of deeds, and take affidavits, besides trying cases. They are a convenience to the people. I do not think the Legislature should be permitted, in a whim, to deprive the people of these conveniences. Then as to their jurisdiction, an argument is made, if I understand the gentleman aright, that in consequence of the county judge being authorized to try civil cases, there is very little use of giving similar jurisdiction to justices. Now, it may be in the county in which the gentleman resides, and in some other counties in the State, that there is not much civil business transacted. But the gentleman must bear in mind that there are other counties in which a county judge is wholly occupied with the criminal business. In the county which I, in part, represent, under the system of 1846, under which no original civil jurisdiction is given to the county court, the county judge is nearly the whole year occupied with the criminal business, and it is difficult for him to keep the calendar clear. As far as the county of Kings is concerned, perhaps it is unwise to give him any original civil jurisdiction, for his whole time is required in trying criminal cases. In large counties like Kings, this must be the case. Yet, if we adopt the amendment which has been offered, and in addition to the burden now upon his shoulders, we are to give him other jurisdiction, it will be impossible for him to discharge the duties which will devolve upon him. It is true, the State has provided in a measure another court in the county of Kings and city of Brooklyn, to relieve the justices. But that court also is overloaded and in session nearly the whole year. As our population increases—and the increase is rapid—other courts will be required to discharge the business which will accumulate. Upon that point, I have one word to say. The Constitution of 1846 and the system reported by the Judiciary Committee provides for the payment of the salaries of the judges of the supreme court by the State. They are intended to dispose of all the important civil and criminal business in the counties, and those judges will dispose and do dispose of that class of business in the great mass of the counties, at the expense of the State. Now, in justice, you should provide, at the expense of the State, a sufficient number of judges to perform that same duty in the county of Kings, and not require them, after paying their proportion of expense for the courts to perform those duties in other counties, to furnish in addition, at their own expense, judges to perform similar judicial duties in their own limits. I hope that the old system of justices of the sessions, which has been in operation and given satisfaction, will be continued, and that no innovation of this kind will be made.

Mr. FOLGER—I move that the committee do now rise and report the article to the Convention, and ask to be discharged from its further consideration.

The question was put on the motion of Mr. Folger, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. C. C. DWIGHT, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on the Judiciary, had made some progress therein, and made sundry amendments thereto, and had directed their chairman to report that fact to the Convention, and ask to be discharged from the further consideration of the article.

The question was put on agreeing with the report of the committee, and it was declared carried.

Mr. FOLGER—I move that this article be made the special order for to-morrow, in the order of unfinished business.

The question was put on the motion of Mr. Folger, and it was declared carried.

Mr. PROSSER—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Prosser, and it was declared carried.

So the Convention adjourned.

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WEDNESDAY, December 18. 1867.

The Convention met at ten A. M. pursuant to adjournment.

Prayer was offered by Rev. J. T. PECK, D. D.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. KRUM presented the petition of John W. Young, and other citizens of Schoharie county, for the abrogation of the Board of Regents of the University.

Which was referred to the Committee of the Whole.

Mr. BEALS presented the petition of Professor J. K. Abrams, and other citizens of Mohawk, on the same subject.

Which took a like reference.

Mr. WILLIAMS presented the petition of H. P. Willard, and fifty-five other citizens of Boonville, Oneida county, on the same subject.

Which took a like reference.

Mr. McDONALD—I ask leave to present a minority report on the salt springs.

The PRESIDENT—No objection being made, the report will be received.

Mr. McDONALD then read the following report:

The undersigned, a minority of the said committee to which was referred that portion of the present Constitution, relating to the salt springs of the State, would respectfully report:

The well known Onondaga salt springs and reservation are confined to a parcel of land lying around and near the head of Onondaga lake, particularly described in the report of the commissioners of the land office to this Convention, document No 27. For many years the manufacture of salt therefrom has been largely on the increase, and although salt water has been discovered in other parts of this State, at no other place has the practical manufacture of salt become a success. Although at one time there seemed some doubt on the subject, yet now the undersigned believes, and all admit that supplies of salt water of the best quality may be obtained on this reservation in exhaustless quantities, and that an annual product, of at least 15,000,000 bushels could be taken therefrom continuously, and without any diminution in the annual supply. Such is the opinion of the present superintendent, Hon. George Geddes, and of every witness examined by your committee. The annual product of the reservation has increased from 25,474 bushels in 1797, to 526,049 bushels in 1821; 3,340,767 bushels in 1841; 5,593,247 bushels in 1860, and 7,158,503 bushels in 1866; of this, solar salt has increased from 220,247 bushels in 1841 to 1,978,183 bushels in 1866. For a more particular statement of the production and brief history of the manufacture of salt, and the change in the laws regulating the same, the undersigned begs leave to call attention to the report of the majority of this committee, and commend the same. The title to this reservation is in the State. All the rights that the manufacturers of fine salt have, are obtained by virtue of leases from the State. In 1859, the whole law in regard to the manufacture of salt and the care and superintendence of this reservation was compiled, altered and amended, and all former laws repealed. (See Laws of 1859, p. 807, chap. 346). Among other changes made at this time was one repealing all former provisions by which certain salt blocks had a priority as to use of water over other salt blocks, and by this law all of the three hundred and sixteen salt blocks were put on an equality as to their right to use the water furnished by the State. Before this, the law provided that the owners of salt blocks might dig wells upon said reservation, and only pay six mills duty per bushel on salt manufactured therefrom. But by the law of 1859, the duty is made uniform at one cent per bushel, and if any person had a well, the superintendent may take possession and appropriate it, paying therefor the reasonable value, "but not to exceed its original cost."

These changes, and such others as were made at this time, cannot be regarded what is usually called unfavorable legislation by the manufacturers of salt.

The law of 1859 still remains in force.

Under this law, and by virtue of section 44 thereof, the superintendent executed leases of said fine salt blocks to the then present lessees for thirty years from 20th June, 1859, and these fine salt blocks are now held under such leases. Each of these leases, besides other conditions and covenants, contains the following: "And the said party of the second part (lessee) covenants with the people that he will conform in every respect to the provisions of any and all the acts of the Legislature now in force in relation to the salt springs and the manufacture of salt in the county of Onondaga, or any laws which may be hereafter enacted in relation thereto," etc.

The rights of the manufacturers of coarse salt arise and are founded on permits or licenses given by the commissioners of the land office. The undersigned does not state more particularly the rights of the salt manufacturers, as he desires only to show that the State has, by virtue of its ownership and contract, exclusive control over the reservation and all the erections thereon. When and on what conditions the State should exercise this power the undersigned does not propose to consider in this report.

In 1859 the manufacture of salt became quite depressed, and the price of salt was quite low. The competition between the owners of the different fine salt blocks was very great, and the capacity of these fine salt blocks being much greater than their manufacture the value of them was much less than their cost.

As will appear hereinafter, about one-third of the whole number of these fine salt blocks, if kept in constant operation during the season of seven months, would produce all the salt that was manufactured by the whole three hundred and sixteen. This was caused partially by the inability of the State to furnish more water, at least of the best quality, and partially by the unprofitable nature of the manufacture of fine salt.

To obviate this, and to combine and make the manufacture of salt remunerative if not profitable, "The Onondaga salt company" was organized in the winter of 1859 and spring of 1860. It is a corporation under the general manufacturing law, and at first had a capital stock of $160,000. This capital stock was made up by calculating five per cent on the value of all the property employed in

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and about the reservation in the manufacture of salt, both coarse and fine, which was called $3,200.000, and the owners of each salt block or portion of land occupied with salt covers for the manufacture of coarse salt, was called upon and expected to pay and take stock in said corporation to the amount of five per cent on this valuation of his property thus used in the manufacture of salt. Almost all the owners did thus subscribe and take stock, and the balance of stock was made up by other persons or owners taking more stock than was allotted, so that over nine-tenths of the stockholders were owners of salt property and in about the same ratio.

After the organiaztion of this corporation the corporation leased each salt block, and almost all lands used for the manufacture of coarse salt of the owners, who were also stockholders. These leases are uniform in their conditions, and a copy of one is included in the testimony submitted and attached to the report of the majority. By these leases this corporation acquired exclusive control of all lands and property thus leased, and in consideration covenanted to pay quarterly an annual rent equal to twelve and a half per cent, upon a valuation of said property provided for therein. This valuation was afterward made, and according to the testimony of J. W. Barker, superintendent of said corporation, these fine salt blocks were not worth at that time, or just before the organization of this corporation, the valuation. Those valued at $5,000 could have been bought at $4,000, and the undersigned believes some of them even at a lower price. Besides this agreement on their part to thus pay twelve and a half per cent on such valuation, this corporation further covenanted "that (it) the party of the second part will, during the period of this lease or grant, or until its termination sooner by forfeiture, as above provided, pay all ordinary city, town, county, school and highway taxes, and will at all times make reasonable and proper repairs for the purpose of protecting the said premises from delapidation and waste by the elements or other causes, and at the expiration of the period aforesaid, or earlier termination of the estate hereby granted, will restore the said premises, erections and appurtenances in as good repair as the same are when these presents are delivered, excepting only accidental losses by the elements other than fire."

These leases were all for ten years. Afterward some of the salt blocks were changed so that salt could be manufactured therein with coal instead of wood, at a cost of from $600 to $1.000, and in such cases the cost, or about the cost, of such change was added to the first valuation, and 12½ per cent paid also on such addition.

Thus, it will be seen, the owners of fine salt blocks, were to, and have, received annually 12½ per cent on a valuation (at least, one-quarter more than the actual value at that time) over and above all taxes, repairs of every kind, and at the end of term get back their property in the same repair, or rebuilt in case it was destroyed by fire or any other way, "except by the accidental losses by the elements other than fire." A few owners of coarse salt blocks did not lease, but this corporation afterward, by contract, obtained control of the sale of all salt thus manufactured.

Thus the Onondaga salt company obtained exclusive control of the manufacture and sale of all salt, both fine and coarse, made from the wells on this reservation, and continue to exercise the same. It allots to each salt block the amount of salt if is allowed to make each year, and determines the price per bushel it will pay, and usually lets this work to the owner of the block from whom it has taken the lease.

Hence it will be seen, that, although "the Onondaga salt company" is the one party in these leases and contracts and the individual or corporate owners of the separate blocks or coarse salt lots and covers are the other party, yet as these same individual or corporate owners are also stockholders in the said corporation in the same ratio as they are owners respectively the interests of both parties are identical, and that "the Onondaga salt company" was organized, for the purpose before stated, by the salt manufacturers by adding five or six per cent to their capital and creating a monopoly in its sale and manufacture.

Since 1860 salt deposits, especially at Saginaw, Michigan, or in portions of Canada, have either been discovered or the manufacture therefrom has been much increased and improved. At these places wood, as a fuel, is much cheaper, and as the cost of fuel is the main expense in the manufacture of fine salt, it can, in that particular, be manufactured cheaper. But on account of the purity of the water from the Onondaga springs, its high comparative strength, its exhaustless quantity, and the ease with which it is obtained, in connection with the improved methods of purifying and manufacturing it into salt, discovered through many costly experiments made by the State and by "the Onondaga salt company," Onondaga salt, of the same quality, is produced cheaper than any other manufactured salt.

The use of coal as a fuel has not only cheapened but improved the manufacture thereof, and as the price of wood can but increase at the place of manufacture where it is used, while on the contrary the price of coal will doubtless not increase except by increase in price of labor, it is quite probable, if not certain, that this difference on account of the cost of fuel as between Saginaw, the works in Canada, and the Onondaga salt springs will become less and less, and thus enable the Onondaga salt the better to compete with salt from these other parts.

In this connection, while referring to causes enabling the Onondaga salt the better to compete in the market with salt from other localities, and especially from Saginaw (which is the principal place from which competition comes westward), the undersigned would call attention to that well known fact that the bulk of freight on the canals and lakes is eastward, and hence that the price of freight is much less from Syracuse westward than from Saginaw eastward. In fact this is so much so that often shippers on the lakes are glad to get salt as *ballast* while any salt brought eastward must pay full freight. The great weight and bulk of salt according to its value only makes this difference the greater. These causes, while they are thus advantageous to Onondaga salt in enabling it to compete with Saginaw salt in its home markets, and markets west of it also, operate

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favorably in another way. They operate to prohibit the sale of Seginaw salt any great distance eastward, especially not on or near Lake Erie, and thus give the entire control of the price in certain markets to the manufacturers of Onondaga salt. The market thus controlled is found to be all the State of New York, except the river counties, New York city, and some of the south-eastern counties. It also includes a portion of Pennsylvania. The competition which prevents Onondaga salt controlling the market in New York city, and the eastern and south-eastern portions of the State, is the low price of foreign salt and the fact of the increased cost of freight eastward from Syracuse, considered in connection with its great weight as compared with its cost, as it gave Onondaga salt the advantage westward, gives foreign salt the advantage in these localities. To counteract this the tolls on the canal on foreign salt when compared with domestic salt are as 2½ to 1½ which makes a difference of five cents per barrel from Albany to Syracuse, and in that proportion for longer or shorter distances. The Onondaga salt company, in order to protect itself and its stockholders from the high price of coal produced by another combination well known as the coal monopoly, purchased a coal mine in Pennsylvania sometime about the year 1862. It operated this mine and thus obtained its own coal until the winter of 1865, when it sold this coal mine at an advance of $510,000, and also obtained a contract with the purchaser to furnish this company with all the coal it might need for 17 years, at 50 cents above net cost.

Thus organized, the Onondaga salt company have operated these salt springs under these circumstances with the following results, as appears from its books, the sworn statement of its officers, and of Hon. Geo. Geddes, superintendent of salt springs, and his deputies.

Amount of salt produced and sold, and price.

YEAR.	Whole Amount.		Solar.		Average price at Syracuse.
	Bushels.	Barrels.	Bushels.	Barrels.	
1859,....	6,894,272	1,378,854	1,345,022	269,004	$0 90
1860,....	5,563,247	1,112,649	1,462,565	292,513	1 25
1861,....	7,200,391	1,440,078	1,884,697	376,939	1 25
1862,....	9,053,874	1,810,775	1,968,022	393,604	1 40
1863,....	7,942,388	1,588,477	1,437,656	287,531	1 99
1864,....	7,378,684	1,475,767	1,971,123	394,222	2 70
1865,....	6,385,930	1,277,186	1,886,760	377,352	2 28
1866,....	7,158,503	1,431,701	1,978,183	395 637	2 35

This salt was sold at the various markets in about the same ratio each year, and in the year 1866, viz.:

New York city,..	149,663 bbls.	at $1 67.....	$249,937 21
Canada,.....	102,036 do	at 1 93.....	196,987 38
Lower Lake,.....	383,330 do	at 2 03.....	778,261 40
Upper Lake,.....	382,234 do	at 1 99.....	760,645 66
State,.....	414,358 do	at 2 25.....	932,295 50
Making total,..	1,431,701	Av. price, $2 03	$2,918,127 15

This shows the net avails of such sales at Syracuse; and as the sales in the State were in fact $2.35, at Syracuse the allowance of ten cents for selling must have been deducted.

The following is a table of the average cost of transportation and sale of a barrel of salt in each market in the year 1866:

Upper lake ports,.....	49 cents.
Lower lake ports,.....	36 "
New York city,.....	51 "

The following is a table of the net price realized at Syracuse of all salt sold in different markets for different years:

	Home sales.	Upper lake ports.	Lower lake ports.
1863,.....	$1 30	$1 68	$1 66
1863,.....	1 89	1 82	1 87
1864,.....	2 60	2 19	2 41
1865,.....	2 16	1 94	1 34
1866,.....	2 25	2 03	1 99

From this it appears that in 1864 salt sold in upper lake ports netted 41 cents less, and that sold in lower lake ports 19 cents less than that sold in home market; and in 1866, that sold in upper lake ports 22 cents less, and that in lower lake ports 26 cents less per barrel than that sold in home market.

In addition to this the sales of fine salt in New York city in competition with foreign salt has been at net price at Syracuse of $1.60 to $1.75, and that sent to Canada via Oswego at a price from 25 to 40 cents per barrel less than home price, and that sold at Albany and some parts of Pennsylvania from 15 to 40 cents less per barrel. Thus the people of this State nearest the reservation have paid so much more, comparatively, for their salt.

In 1866, the valuation of property on which the Onondaga salt company paid 12½ per cent under their leases was:

Coarse salt property,.....	$1,618,640 00
Fine salt property and mills,.....	1,777,613 76
	$3,396,253 76

They are now valued, in the statement made by the superintendent of the Onondaga salt company, as follows:

517 coarse salt vats, $57 each,.....	$2,195,469 00
316 salt blocks,.....	2,205,500 00
5 salt mills,.....	98 000 00
	$4,498,969 00

The dividends made by the Onondaga salt company were:

1861. Dec. 14,....	$11,242 86	
1862. March 1,....	20,000 00	
1862. April 26, ...	40,000 00	
" May 23,....	40,000 00	
" Sept. 13,....	40,000 00	
" " 27,....	40,000 00	
" Oct. 4,....	40,000 00	
" " 11, ...	80,000 00	
" Nov. 15,....	80,000 00	
1863. May 30, ...	160,000 00	
" Sept. 12,....	160,000 00	
1864. Feb. 20,....	160,000 00	in stock.
" " 20, ...	96,000 00	payable Dec. 1, 1864.
" " 20, ..	9 ,000 00	payable Feb. 1, 1865.
1867. " 2,....	67,200 00	payable June 10, 1867.
	$1,130,442 86	
Surplus Apr 1, '67.	768,023 08	
	$1,898,465 94	
Surplus Apr 1, '67.	$768,023 08	
" "	661,006 70	
Profit.....	$107,016 38	

The Onondaga salt company make the follow

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ing return of its operations in its investment in the coal mine, and getting their own coal:

Year.	No. of tons furnished.	Cost price.	Price of coal monopoly.
1863,	55,509	$4.199	$5.486
1864,	96,626	5.373	8.97
1865,	127,417	5.03	7.776

The company sold their coal mine in winter 1865 and 1866, but under their contract they received,

1866, 132,503 at cost, $4.537 $6.262

making the whole number of tons furnished, 412,255 tons, with aggregate difference in price at which it was furnished, and asking price of coal monopoly, $989,229.01.

In 1866 the Onondaga salt company furnished coal to the manufacturers of fine salt at $5.00 per ton.

The joint salt monopoly furnished it 1867, $5.02 per ton.

In 1866, for every ton of coal consumed in manufacture of fine salt, 36 19-56 bushels of salt was produced.

In 1866 the company paid, under its contracts for manufacturing fine salt, 19 cents, and coarse salt, 8 cents per bushel. The average production of each fine salt block in 1862 and 1866, which was operated, was, 1862, 232½ bushels, 1866, 233½ bushels. General average, 233 bushels.

In 1866, only 214 fine salt blocks were put in operation, leaving 102 idle, each one in operation making on the average, 25,447 bushels.

With coal at $5 per ton, it was found on the average, that the coal to manufacture each bushel of salt, cost about 13¼ cents.

The salt boiler, who does all the work, was paid for boiling, three cents per bushel, and it was reckoned that one cent per bushel would pay all repairs. Each coarse cover produces, on an average, each year, 50 bushels. Each workman can take care of 100 covers, and in 1866 his wages were fourteen shillings per day.

The superintendent of the Onondaga salt company returns as the cost to that company of the manufacture of fine and coarse salt per barrel in the year 1866, viz.,

FINE SALT.

Manufacture, 5 bush. 19 cents,	.95
State duty, " 1 "	.05
Taxes and office expenses,	.10
Rents of original leases,	.25
Packing,	.05
Barrel,	.45
Whole cost per barrel,	$1 85

COARSE SALT.

Manufacture, 5 bush. 8 cents,	.40
State duty, " 1 "	.05
Taxes and office expenses,	.10
For rents to original lessee,	.55
Barrel,	.45
	$1 55

From the report of the commissioners of the land office (Con. Doc. No. 27) and the superintendent of the salt springs (Con. Doc. No. 19) the further following facts appear:

That the whole number of acres of land owned by the State,	1174.87
Of this there is leased for fine salt block about,	54
" " " coarse salt covers,	754.68
There is of private land occupied by coarse salt covers	173.30

Of the remaining land except that occupied by the State buildings and works, most of it is low marsh land. But the best wells are found on it about the mouth of Onondaga creek and near the pump house, in the third ward of Syracuse.

The number of fine salt blocks on State land,	216
" " " " " " private "	100
The average annual capacity of these 316 blocks,	12, 000,000 to 15,000,000

That there were, at time of report, fifteen wells in use, and they were digging another which has since been finished and proven to be one of the best wells.

The average production of these fifteen wells is about 1,400 gallons per minute, 900 of which averages 66 degrees salometer or 16½ per cent salt; remaining 500, average 54 degrees salometer or 13½ per cent salt. The water averages from 52 degrees to 74 degrees salometer.

Annual capacity to furnish water to make about 9,000,000 bushels.

Average cost of production per barrel to the State, three cents three and one-quarter mills.

The total revenues and receipts from salt works since 1846, are,	$1,429,402 65
The total expenditures since 1846,	1,041,927 67
	$387,474 98

It will be noticed, that on stating the aggregate expenses (Doc. 27. page 31), there is a mistake of $100,000, arising from error in adding.

Making average yearly net income, $19,373.75.

The following table shows the sources from which receipts came and the objects for which expenditures were made:

Onondaga Salt Springs.

YEARS.	EXPENDITURES. Ordinary expenses and improvements.	EXPENDITURES. North side cut canal Onondaga lake improvement.	TOTAL.	RECEIPTS. Current Revenue.
1846,	$18,917 78	.....	$18,917 78	$75,507 34
1847,	30,547 95	.....	30,547 95	32,396 64
1848,	25,520 21	.....	25,520 21	43,847 67
1849,	29,754 05	.....	29,754 05	51,586 98
1850,	*29,027 00	.....	29,027 00	44,361 08
1851,	30,000 00	.....	30,000 00	45,458 58
1852,	33,911 58	$1,000 00	34,911 58	47,928 17
1853,	24,826 70	.....	24,826 70	52,159 85
1854,	25,250 00	.....	25,250 00	54,987 88
1855,	51,000 00	.....	51,000 00	57,777 90
1856,	43,000 00	.....	43,000 00	60,975 53
1857,	52,000 00	14,000 00	66,000 00	58,476 91
1858,	59,000 00	2,300 00	61,300 00	58,138 18
1859,	44,000 00	12,000 00	56,000 00	69,026 54
1860,	†43,916 00	7,500 00	51,416 00	65,675 51
1861,	48,500 00	15,000 00	63,500 00	66,299 57
1862,	39,000 00	4,074 44	43,074 44	57,418 98
1863,	32,000 00	.....	32,000 00	76,090 75
1864,	50,000 00	.....	50,000 00	88,125 31
1865,	48,000 00	.....	48,000 00	62,765 64
1866,	‡49,184 00	.....	49,184 00	70,411 66
	$807,355 22	$55,874 44	$863,229 66	$1,264,133 19

*Includes $777—award under chapter 330, Laws of 1849.
†Includes $600—on account of Montezuma salt springs.
‡Includes $7,009—for work, etc., prior to March 1, 1865.

In addition to these, there has been received

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from sales of land, $165,168.74, and there has been expended for land and damages, $178,698.02. (For particular statement see document No. 27, pages 9 to 21.) That the cost and value of wells, pump houses, conduits, offices and erections of the State, (see doc. No 27, p. 5), is $311,710.

This is an abstract statement of the facts proven before the committee, and some estimates of the superintendent of the Onondaga salt company. The facts will not be disputed, at least by the salt company or manufacturers, as they furnished all but those from the State records. As to their estimates, we shall have something to say.

The undersigned has been thus particular to state these facts, because of the great disagreement among the committee with regard to the subject referred to them, so that, although he may not be able to find out any remedy, he may yet furnish the facts from which the Convention may the better determine upon the question. His excuse for so particular a statement in relation to the Onondaga salt company is that, its history is the history of the entire salt manufacture ever since it was organized, and because the undersigned believes that the operation of the monopoly created by its organization and maintained by it ever since, has been detrimental to the interests of the people of the whole State, although it has been very profitable to all persons interested in the manufacture of salt, and hence to all interests connected therewith. From these facts, thus established, the undersigned has deducted the following tables, which he believes to be correct.

It will be observed that in the calculation as to the cost of manufacture of salt, both coarse and fine, the amount allowed for rent differs in the tables of the undersigned from the statement of the superintendent of the salt company. The difference arises in this: The undersigned calculates his tables from the actual rent paid by the Onondaga salt company, as returned by them, viz.: on $1,618,640, for coarse salt property, and $1,777,613.76 for fine salt property, while the calculation of the superintendent is made on his valuation of the present value of said property, viz.: $2,195,469 on coarse salt property, and $2,303,500 for fine salt property. The undersigned submits that, if the salt company wish to make a return of the actual cost, they should base it upon what they actually pay, and that it is not just, by monopoly, to increase the price of salt, and because of this increase in price to increase the valuation of the property, and then calculate the rental on this increased appraised value, as a part of the cost of production, to account for the increased price produced by monopoly. With these suggestions, he submits the tables, viz.:

TABLE No. 1,

Showing the average production of fine salt blocks during the year 1866, and cost of work and coal to manufacture the same:

214 blocks were operated, producing the average	25,477 bush.
During 1862 and 1866 the average production of each block daily was 233 bushels. If, therefore, it was operated 210 days, or continuously during the season, each block would produce	48,930 "
106 days would produce	5,180,390 "

which is the entire production of 1866. Hence to produce all in 1866 only required 106 blocks; balance of 206 blocks useless.

The price paid for manufacture was		19 cents.
Of this the average cost of coal was	12¾	cents.
Paid for boiling,	3	"
Repairs,	1	"
Profits,	1¼	"
Making,		19 cents.

If the blocks are operated as in 1866, producing 25,447 bushels in season, the allowance for repairs on block worth average $5,000, will be, ... $254 47
Allowance for superintendence, ... 318 09
If the blocks were operated continuously through season, producing 48,930 bushels, allowance for repairs would be, ... 489 30
Allowance for superintendence, ... 611 62

This shows that 19 cents pays liberally for manufacture, repairs and superintendence, and in addition to this the owner gets 12½ per cent on valuation.

TABLE No. 2,

Showing how much should be allowed per barrel for the manufacture of salt by the Onondaga salt company in order to pay dividends upon the whole property leased by them, that portion of the salt blocks necessary to us, and upon the capital stock invested, as determined by the manufacture of 1866. The whole number of barrels made was 1,431,701, of which 1,036,064 was fine salt, and 395.637 was coarse. The valuation of fine salt property on which rent was paid was $1.777,613.76; of coarse salt property, $1,618,640:

	Fine Salt. Rent.	Pr. bbl.	Coarse Salt. Rent.	Pr. bbl.
At 12½ pr.ct. on all,	$222,201 71	21.5	$202,330 00	51.2
At 7 pr. ct. on all...	124,432 96	12.	113,704 80	28.6
At 10 pr. ct. on average valuation of 106 blocks necessary to make all salt made, if in continuous operation, value $661,414.38, ...	66,141 43	06.4		

TABLE No. 3,

Showing average cost per barrel for manufacture of salt by Onondaga salt company for year 1866, and also what it would cost if this company paid seven per cent instead of twelve per cent on their leases, or ten per cent on the leases of one hundred and six blocks, which would make all the fine salt if kept continuously at work:

	Manufacturing and repairs.	Duty.	Taxes and office expenses.	Rent.	Barrels.	Packing.	Aggregate.
If you pay 12½ per cent, as company does—							
Fine,	.95	5	.10	.215	45	5	1.815
Coarse,	.40	5	.10	.512	45	..	1.512
If the salt company should pay 7 per cent on valuation—							
Fine,	.95	5	.10	.12	45	5	1.72
Coarse,	.40	5	.10	.286	45	..	1.286
If company should pay 10 per cent on valuation of 106 blocks ($661,414.38)—							
Fine,	.95	5	.10	.064	45	5	1.064

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TABLE No. 4,

Showing the average net price at which salt was sold by the Onondaga salt company during the year 1866 in different markets. The price per barrel that the residents of this State (except New York river counties and some south-eastern counties) paid more than non-residents of different markets, and the aggregate excess in price thus paid. The amount sold in State market at $2.25 was 414,358, of which at least 350,000 barrels were thus sold to inhabitants of this State:

Number barrels.	Name of market.	Price sold for in that market.	Home price per barrel.	Difference price per barrel.	Aggregate difference.
350,000	Upper lake ports....	$1 98	$2 30	$0 32	$112,000 00
	Lower lake ports....	1 94	2 30	0 36	126,000 00
	Canada.....	1 88	2 30	0 42	147,000 00
	New York city, to compete with foreign salt,.....	1 67	2 30	0 63	220,500 00
	Average price over other markets,....	....	....	0 43	150,500 00

P. S.—This table is made up from the returns of the officers of the Onondaga salt company, with this single exception: They charge home market with 10 cents per barrel for taxes and home office expenses, and put no such charge on salt for other markets. This table divides it and puts five cents per barrel for such expenses on all sold.

TABLE No. 5,

Showing profits made by the "Onondaga salt company" on the 350,000 barrels (of the 414,358 barrels returned as State) sold to the inhabitants of this State where this company controls the price without competition. It is calculated on 260,000 barrels fine, 90,000 barrels coarse salt, which is in proportion to entire manufacture:

The capital stock is....	$320,000, 10 per ct.,....	$32,000 00
surplus is,.	$768,023 18	
borrowed,..	400,000 00	
	$1,168,023 18, .7 per ct.,...	81,761 61
		$113,761 61

The whole number of barrels manufactured was 1,431,701, which makes the allowance on each barrel, to pay 10 per cent on capital stock and 7 per cent on surplus and borrowed money, eight cents.

The cost of manufacturing barrel of fine salt, paying 12½ per cent on all leases, was (table No. 3).....	$1.81 5
Add for use of capital stock and surplus,.....	.08 0
Makes total cost,.....	$1.89 5
The cost of manufacturing coarse salt per barrel, paying 12½ per cent on leases, was (table No. 3).....	$1.51 2
Add for use of capital stock, surplus, &c.,.....	.08 0
Total cost of barrel of coarse salt.....	$1.59 2
But 260,000 barrels of fine salt at $1.895 will cost.....	$492,700 00
90,000 barrels coarse salt at $1.592, will cost	186,520 00
	$685,980 00
But the 350,000 sold for $2.35—$822,500, leaving a profit of,.....	$136,520 00
	$822,500 00

Hence the clear profit on the salt sold the inhabitants in the home market was $136,520. over and above and after paying 12 1-2 per cent clear on all the real estate, 10 per cent on stock, and 7 per cent on surplus and borrowed money.

If the salt company had only paid 7 per cent net on the valuation, in leases, then the cost of manufacture per barrel fine salt would be (table No. 3).....	$1.72
Add for use of capital stock and surplus, &c.,..	08
Total cost fine salt per barrel,.....	$1.80
The cost of manufacture per barrel of coarse salt would be (table No. 3),.....	$1.28 6
Add for use of capital stock, surplus, etc.,.....	.08 0
Total cost coarse salt per barrel, ...	$1.36 6
But 260,000 barrels fine salt at $1.80 per bbl., ...	$468,000 00
90,000 barrels coarse salt at $1.36.6.....	122,940 00
Total cost, ...	$590,940 00
350,000 barrels at $2.35—$822,500, leaving as profits,.....	$231,560 00
	$822,500 00

Thus showing a surplus profit of $231,560 on sales of 1866 to inhabitants of State, over and above 7 per cent net on real estate, 10 per cent on capital stock, and 7 per cent on surplus and borrowed money.

TABLE No. 6.

Showing the amounts divided among the owners of the salt works, coarse and fine, both in the shape of rents for real estate and dividends made by the Onondaga salt company, together with its surplus now on hand, thus showing the aggregate net profits of the owners of the salt works since 1860. The valuation of property on which 12½ per cent was paid for the year 1866, was:

Coarse salt covers,.....	....	$1,618,640 00
Fine salt blocks, etc.,.....		1,777,613 76
Total for 1866,.....		$3,396,253 76
Deduct so as to make average,.....		50,000 00
		$3,346,253 76
On this 12½ per cent has been paid yearly, for seven years, which for one year is 418,282.22, and for seven years make total rent paid,.....		$2,927,975 54
Amount of dividends made by Onondaga salt company,.....	$1,130,442 86	
April 1, 1867, surplus,.....	768,123 08	
		1,898,465 94
Making total net profits divided in seven years, ...		$4,826,441 48

If you deduct the bonus received on sale of coal mine, as not strictly within the business, viz., $510,000, you still have $4,316,441, or about $1,000,000 more than the valuation of the property on which they pay 12½ per cent, it being 127 per cent on property invested, and an average of more than 18 per cent annually.

From these tables, if correct, the following facts are established:

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First. That of the 316 salt blocks only 106 are necessary to manufacture all the fine salt sold in 1866.

Second. That the Onondaga salt company has since its organization paid 12½ per cent on an excessive valuation, when made, of all these 316 salt blocks (although only 106 were needed and only 214 actually operated) net, over and above all taxes, insurance, dilapidation or other injury, and that this amount is called and calculated as part of the expense of the manufacture of salt.

Third That even under the liberal calculation and allowances of the salt company, and on this basis of 12½ per cent rent on all 316 blocks in 1866, the entire cost of a barrel of fine salt was $1.81.5, for coarse salt $1.51.2. If only seven per cent net had been allowed on valuation of all 316 blocks, the cost would have been $1.72 for fine and $1.28.6 for coarse salt per barrel; and if 10 per cent net on valuation of 106 blocks necessary, then the cost would be $1.66.4 for fine per barrel (tables Nos. 2 and 3), while all salt was sold at a net average of $2.03 per barrel.

Fourth. That the inhabitants of the western, northern, middle and southern portions of this State for the 350,000 barrels bought by them in 1866, were compelled to pay $147,000 net more than the inhabitants of Canada paid for same quantity. $220,500 more than the same amount sold in New York city net, and $150,500 more than the average sales in all other markets net (table No. 4). This is the benefit that the people of the State derive from the exclusive ownership and control of the salt springs and manufacture of salt therefrom.

Fifth. That the profits made on the 350,000 barrels sold the people of the State, residing where the salt company has a monopoly of the market, was in 1866, over and above 10 per cent net on the capital stock, 7 per cent on surplus and borrowed capital, and 12½ per cent net on said leases, $186,520, and over and above 10 per cent net on capital stock, 7 per cent net on surplus and borrowed money, and 7 per cent net on leases, $231,560 (table No. 5).

Sixth. That since 1860 the owners of the salt works have, on a property of the value of not more than $3,500,000, divided to themselves as net profits the amount of $4,316,441, or 18 per cent net yearly (table No. 6).

Seventh. That during the same time the entire net revenue of the State from these salt springs has been only $79,812.98, or only $11,401.85 annually for the use of all its property. (See return of receipts and expenditures of Onondaga salt springs, page 12.) If this be a true statement, the undersigned submits that the representatives of the people of the State, whether in Legislature or Constitutional Convention, should try and seek an appropriate remedy.

But before the undersigned proceeds to consider the remedy, he begs leave to refer to certain positions taken by those who represent the interests of the manufacturers of salt.

The undersigned is well aware that even before the committee there appeared a worthy man, who had been engaged in and acquainted with the manufacture of salt for many years, who stated that in his opinion manufacturers of salt had not, in the aggregate, made a net profit of over seven per cent per annum on investment. While the undersigned doubts not that the opinion thus given is perfectly honest, he would suggest that so many questions of the valuation of the property and cost during so many years are involved in the opinion, that it would be impossible to determine as to its actual value. Nor does he deem such an opinion material to the question under consideration. For the past seven years we have the actual results as returned to the committee by the officers of the Onondaga salt company, and hence against this no opinion can prevail. As we are seeking to remedy present evils instead of those of years long ago, the undersigned submits that the actual results of seven years past should be satisfactory.

But it is claimed that the large profits of the Onondaga salt company came not from the manufacture of salt, but from its great success in the purchase, working and sale of the coal mines.

It will be seen that the undersigned allows for the $510,000 bonus obtained on the sale, and he submits that is all that should be allowed.

The purchase was made entirely for the benefit of the manufacturers of salt, and the undersigned is quite sure that if it had proven a loss that would have been charged. Hence as a profit it should be credited.

Again, all other losses without particular statement are charged.

Take the year 1866.		
1,036,064 barrels fine salt at $1 81.5 cost per barrel,		$1,880,456 16
395,637 barrels coarse salt at $1 51.2 cost per barrel,		598,203 14
1,431,701 barrels in all, cost,		$2,478,659 30
But the 1,431,701 sold for net at Syracuse,		2,918,127 15
Leaving a net profit to salt company of,		$339,467 15
While the salt company only return the profits of year 1866 at,	$107,016 38	
To which, if you add dividend of Feb., 2, 1867,	67,200 00	
you have	$174,216 38 Profits,	$174,216 38
Leaving of losses not particularly stated,		$165,251 47

It is claimed that this deficiency arises from losses by agents and in various ways, but the undersigned submits that with such a margin of losses all the profits of an undertaking especially for the benefit of the business should not be deducted. But the evidence shows that the coal companies have furnished coal during the early part of this year at $5.02 and as the calculation was at $5 per ton, and the price of salt is the same this year as in 1866, the undersigned submits no deduction can be made for year 1867 on that account.

Although the undersigned claims it should not be done yet even if you allow all the profits claimed on account of coal contract, yet the remaining net profits would be amount of a 12½ per cent on leases,	$2,927,975 54
And profits of salt company over and above alleged profits on coal,	399,263 93
	$3,337,239 47

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which is at least equal to the entire valuation of all property belonging to the manufacturers in 1860, making a net profit of 100 per cent or over 14 per cent per annum net profit.

In the report of the majority of the committee, the relation between the State and the manufacturers of salt is spoken of as a *quasi*-partnership, and taking this as a foundation, the minority report of Mr. Comstock makes certain calculations as between the State and the manufacturers.

The undersigned begs leave to dissent from any such position. The relation between the State and the manufacturers bears no resemblance, and has no similarity to a partnership. There is no joint interest in either the property or the profits. The State is the owner and lessor performing certain work for a fixed compensation for the work and use of the property. The manufacturers are the lessees, with no obligation to pay any thing but the rent. The State legally has the whole control. For the past seven years the manufacturers have practically had the whole control.

But even on the basis of a copartnership or *quasi*-copartnership, the report of Mr. Comstock, while it sets forth the true general principles which govern the settlement of a copartnership omits to take into account many items that should properly be considered, and in the opinion of the undersigned such report does not properly consider other facts.

In his statement of the capital stock invested on the part of the State, he only allows the nominal price paid the Indians for the reservation, and the cost price of buildings, offices, and erections thereon, it being only about $11,000 over and above the cost of the erections. Such an allowance need only be stated to see its unfairness. That the value of all the lands (about 1,100 acres) belonging to the State, with the saline deposits, is only $11,000, is too absurd to need more than to be mentioned. The report also omits to say any thing about the vast water-power drawn from the canal, moving four large water-wheels, which operate the pumps. It also charges as profits received by the State, the tolls received at 12½ cents per bushel, when in another part of the report it is admitted that such increased duty was asked for to improve the canal, and thus benefit the salt works. The undersigned submits that the benefit of the Erie canal has not been so unimportant to the salt manufacturers that, after they have received the benefit of the expenditure of such increased duty, they should seek to charge it against the State. A failure to take these matters into consideration, makes the calculation entirely delusive.

Again, in the year 1859, the whole arrangement between the State and the salt manufacturers was changed; and, although the undersigned denies that the relations between the State and the salt manufacturers bear any resemblance to a partnership, yet he fears not to compare the profits received by each on the value of the property invested. The undersigned submits that if you consider the property of the State only equal in value to that belonging to the manufacturers, this valuation is too small. But thus regarding the State and the manufacturers as having property of equal value invested, since 1859 we find that the manufacturers have received as net profits since their investment, $4,316,441 (table No. 6), while the State from its equal investment has only received $79,812.98. (See page 12.) From such a connection, whether it be called a partnership or *quasi*-copartnership, it is submitted that the State should seek to be relieved, especially where, as we have shown, a very large portion of such profits, and much more than the proportionate share, is taken from the people of the State.

Having thus referred to these collateral matters, the undersigned begs leave to submit the following considerations with regard to the constitutional provisions necessary and proper in relation to the salt springs:

The Constitution should provide as to the salt springs:

1. That the exclusive control and management should be given to the commissioners of the canal fund, or some independent board.

2. Those who manufacture salt from the reservation should be prohibited from discriminating in price against the people of the State.

3. The absolute control of the manufacture by any one person, association or corporation should be prohibited, and in part to accomplish this, every inhabitant of the State should be allowed to dig wells and manufacture salt on the same condition as any other citizen.

4. The duty should be increased.

5. The salt springs and reservation should not be sold.

First. The exclusive control and management should be given to the commissioners of the canal fund or some other independent board.

Heretofore the control has been with the Legislature as the law-making powing. It may seem almost inexplicable that the Legislature or any other agents or the people should have allowed the interests of the people to be thus disregarded in the management of the salt springs, as has been shown. But when we consider the great combined local interests—the large pecuniary interest involved—the ability and industry of the representatives, in both Senate and Assembly, from the locality interested, and the opportunity under the present Constitution to co-operate and combine with other local or public matters, the result, although it may seem almost unaccountable, need not be wondered at. The history of attempted legislation on the subject would best serve to explain this.

If, however, the exclusive control was given to the commissioners of the canal fund, the rights of both the State and the manufacturers would be duly regarded and decided upon their own merits, not connected or combined with other projects or interests.

Second. Those who manufacture salt from the salt springs of the State should be compelled to sell the salt manufactured therefrom as cheap to the people of the State as to other persons.

As we have shown, the State has exclusive control over the salt springs and the manufacture of the salt therefrom. On account of the cheapness with which salt can be there manufactured, and its great comparative bulk and weight, and con-

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sequent cost of transportation, the people of the western, northern and southern portions of the State are entirely dependent for their supply on Onondaga salt, and the manufacturers thereof completely control the market and make the price what they wish. This is the result of natural causes, and the increased price charged the people of those portions of the State on account thereof has been fully stated. Under such circumstances, what more natural than that the people, the owners of these springs, having absolute control, should enact that their lessees should furnish them, with what they needed of this necessary article, at at least the same rates as they furnish others not having any interest in the property. What more natural than that a farmer who shall rent a farm which produces an article of necessity not produced by any other farm, should agree with and thus compel his lessee to furnish him with what he may wish of that necessary article as cheap as furnished to others. How unnatural would it be for him to pay much more, especially where, by his lease, he still has absolute control of the matter.

But it may be said this is not practicable. Why not? As extensive as the sales of salt are, there can be no trouble in finding out what they are and the price, and with that knowledge, and the absolute power to cut off all supply of water, the undersigned submits that the people or its agents are possessed of all that could be wished to enforce the prohibition. Yet it may be urged that if this be done that the manufacture will become so unprofitable that it will not be prosecuted. It is sufficient for the present to say that the Onondaga salt company claim that they do not sell any salt below cost, and that cost includes a liberal allowance for all other expenses, and 12½ per cent net annually on all real estate invested therein. This is submitted to be a fair if not a large income. For further considerations on this subject the undersigned begs leave to refer to the remarks hereinafter on the question of an increase of duty. With this provision the inhabitants of this State would get the advantage of competition. The capacity of the works being so much more than the consumption of the people of the State, the salt manufacturers must and do send their salt to other markets where it comes in competition with Saginaw salt in the West and foreign salt in the East, as hereinbefore stated, and thus, under the present monopoly, salt is sold in those other markets from 20 to 45 cents less per barrel net than to the people of the State. If this provision was adopted, the people of this State would get their salt thus much less, and would be relieved from the payment of the large amount averaging over $150,000, which they are now compelled to pay for the privilege of owning and having absolute legal control of the salt springs.

Third. The control of these springs or the manufacture of salt therefrom by any one person, association or corporation should be prohibited, and to accomplish this every citizen of the State should be allowed to dig wells and manufacture salt therefrom on the same condition as any other.

Now no one but the State can dig any wells, and even if any person was allowed to he would still be liable to pay the same duty as one to whom the State furnished water, and in addition he would be subject to the right of the superintendent to take his well on his paying him its value, not exceeding its cost. If this clause was not expressly intended to prevent any one digging any well, it accomplishes that result equally well No person will invest his money where if he loses it is his loss. If he succeeds the result of his investment and labor can be taken away from him on payment of not more than its cost.

The amount of capital required to sink a well and erect a block to manufacture fine salt is not so great that it cannot be easily obtained, and if a free competition was allowed as long as the manufacture was profitable enough, persons would be found to go into the business. If the statement of facts and deductions therefrom hereinbefore prove any thing, it is that the great evil in the management of the salt springs is the monopoly by which it is controlled, and hence the great remedy is to prevent any monopoly in the manufacture of this article of necessity.

To accomplish this the undersigned knows of no more effective system than to allow all citizens under general rules to go on and manufacture salt. The facts before stated have shown there is plenty of opportunity and the supply of salt water is exhaustless. The undersigned will show, when treating of the increase of duty, that at present prices, in any market, the production of fine salt would be very profitable, and if so, an opportunity to compete on equal terms would soon bring about competition. Especially would it be so if the manufacturers were not allowed to make any discrimination against the people of this State, as recommended; and thus the price would be affected by this competition and become a fair indication of its cost within this State.

Nor can it be objected that this would in any way interfere with the rights of the present owners or lessees of salt springs. There is no provision in any way regulating the distribution of water, excepting only that furnished by the State, and there is no obligation on the part of the State to furnish any particular quantity. Even as to the distribution of that furnished by the State, the mode or right of priority may be changed as in 1859. Hence, as to that inexhaustible supply, which any person may pump and procure for himself, there is no limitation on its disposition, and any disposition of it the State might see fit to make for its own protection or purposes cannot be objected to by the present lessees. In fact, the undersigned would, as far as possible, consistent with the rights of the present lessees, have the State relieved of all work in procuring or distributing the salt water and restrict its operation to the enforcement of such regulations and restrictions as may be necessary to collect the duty, insure purity of the manufactured article, and guaranty and protect the people in all their proper rights as owners of said salt springs and reservation.

Under such a rule, allowing any citizen to dig and manufacture on the same conditions as any other, the board having charge of these salt springs and reservation could easily see that no

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one person or monopoly leased or controlled the whole or greater part of said springs.

Fourth. The duty on salt should be increased.

This question, and the next, as to the sale of the springs and reservation, are the ones principally discussed in the reports of the majority and of Mr. Comstock. As to the right of the State to levy a duty there is no dispute. As to the present necessities of the State we all know too well. A large debt presses upon us.

As claimed by the report of the majority, the undersigned cannot see why the State should not derive an income somewhat commensurate with its value from its property, just as any individual does.

But in addition to this, the undersigned would increase the duty in order to thus give some portion of the large profits, now obtained, to the State. If the duty was increased, then the manufacturer must sell the article on which he pays this increased duty for so much more as the increased duty, or he must make and sell it for so much less profit.

But, as has been shown, the present capacity of the springs and of the salt works is much greater than the market, and the only competition is at a distance and mostly outside of the State, and even now about five-sevenths of the entire product is sold in these outside competing markets. If, then, the recommendation of the undersigned that all discrimination in price as against the people of this State should be adopted, the only question is whether salt can be manufactured at such a price, that with this duty added it can be furnished so as to compete in these outside markets. It will be remembered that in all the calculations so far made, as to the cost of salt, both coarse and fine, the undersigned has taken the allowances made by the Onondaga salt company. As has been before stated, the undersigned believes some of these allowances to be liberal if not excessive. In addition to the high rent paid and charged for the use of the property, and the fact that only about one-third of the fine salt blocks are necessary, the undersigned would call attention to others. The allowance of 19 cents for manufacturers of fine salt, over and above rents, the undersigned believes to be too great. As will be seen by table No. 1, at 19 cents an average block, worth $5,000 would, when operated as now (only about 100 days), allow $254.47 for repairs, and $318.09 for superintendence; and if it should be operated 210 days the allowance would be $489.30 for repairs, and $611.52 for superintendence.

The aggregate price of boiling 100 days, at 3 cents per bushel,	$764 31
The aggregate price of boiling 210 days, at 3 cents per bushel,	1,467 90
If the price was 2 cents per bushel, 210 days,	978 60

Which would be about $500 for each boiler, or over $107 each more than they now get for what is made in each block. This, in addition to a large rent and the payment of all taxes, the undersigned submits is quite liberal. As to the allowance of eight cents for manufacture of coarse salt, the undersigned has reason to believe that while it affords a liberal compensation it is probably not too much. The undersigned also regards the charge of ten cents per barrel for taxes and the expenses of the home office as quite large. It will be remembered that all sales are reckoned net at Syracuse, and hence all cost of outside agencies or expenses are deducted. Now ten cents per barrel on the production of 1866 would make the sum of $143,170.10. That so large a sum should be expended in payment of taxes and expenses of the home office, does not seem necessary. Either the salaries of the officers and employees, or the taxes, or both, must be very large to cost that sum.

And yet, with all the allowances and 12½ per cent net on all real estate, useless and idle as well as used, the cost of manufacture of fine salt would be,	$1.815	for coarse	$1.512
If 7 per cent net be allowed on all property, would be,	1.72	" "	1.396
If 10 per cent net be allowed on property needed to manufacture (106 blocks), would be,	1.664		

But if there was no monopoly, and the competition between the different owners of the blocks was allowed to operate, then salt could be manufactured at the following rates:

10 per cent on average value of blocks	$500
For repairs	250
	$750

If the blocks operate 210 days at average production of 233 bushels, total production would be 48,930 bushels. Allowing $750 for rent and repairs, it would be .015 per bushel.

Hence the undersigned submits that the following as a fair allowance for the manufacture of salt per barrel:

	Fine salt.	Coarse salt.
Use of real estate,	$0.075	$0 40
Boiling,	0.100	
Cost of coal, $5 per ton,	0.675	
State duty,	0.050	0 05
Paid for making and repairs, vats and packing,	.....	0 04
Taxes and selling,	0.050	0 05
Packing	0.050	
Barrel,	0.450	0 45
Making total cost per barrel,	$1.545	$1 35

If these calculations be correct, then, on the average, salt could be manufactured so as to be sold at $1.50; if you should add two cents duty per bushel, ten cents, it would make the cost $1.60. But the lowest salt has been sold, as reported, was in New York city, and that produced $1.75 to $1.87 net at Syracuse. And as the net avails of other markets is from $1.90 to over $2.00, the undersigned submit that an additional duty of two cents per bushel might be added, and yet allow a good profit, and enable the manufacturers to compete in any market they now occupy, and even go farther. We have already shown the future prospects as to the ability of the manufacturers of Onondaga salt to compete with that manufactured elsewhere, are very favorable.

The undersigned therefore submits, that as a legislative act, it would be proper to add an additional duty of two cents per bushel; yet, as a part of the Constitution, he would say that the duty should not be less than two cents per bushel, leaving the board of commissioners of the canal fund to raise it if proper.

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The undersigned is aware that salt is one of the necessities most generally and equally used by people of all classes, and hence, that according to well established rules, other things being equal, a tax in the shape of a duty should not be levied upon it. This position is urged by the report of the minority, Mr. Comstock, with great ability and at length. The undersigned would, however, suggest that the duty on salt is not a tax in shape of a duty. That term is only applied when a government, without in any way producing or adding to the intrinsic value of an article, simply by virtue of its sovereign power, compels the payment of a certain sum as a duty thereupon for the support of government. Such are the impost duties of the general government. But such is not the nature of the duty on salt. It is simply a small and reasonable charge for the use of the property and labor of the State, and the distinction sought to be drawn in the report of Mr. Comstock, between the propriety and justice of payment for the labor of the officials and agents of the State and payment for the use of its property, has no foundation in fact, any more than if it had been the labor and use of property of any individual. The learned quotations and reasonings in regard to a duty, simply as a tax, do not therefore apply.

The fact that about four-sevenths of the salt manufactured is sold out of the State, and that only three-sevenths of the duty is paid by the inhabitants of this State, is only an additional reason. If those who reside out of the State get the advantage of the use of the property of this State, why should they not pay for it?

But it is urged by Mr. Comstock in his minority report that if a higher duty is imposed it will compel the manufacturers to abandon part of the market they now furnish, or they will be compelled to add sufficient to the price of that sold in the home market alone (about three and a half times the increased duty) to reimburse them, and thus a portion only of the State will pay the taxes of the State. The last suggestion, to put it wholly on that sold in the home market, only shows the presumption of the advocates of those who by monopoly are enabled to exercise a power over the people who legally own all and control all. The recommendation that the manufacturers should be prohibited from discriminating in the price against the home market would prevent this. As to their being driven out of any market, that would depend upon how little profits the manufacturers would put up with before they would abandon any market. The undersigned has tried to show that they could make a very liberal profit, and sell in all markets and even more than they do now.

But the difference is that the report of Mr. Comstock claims as a part of the cost the excessive allowances referred to in this report. That among other things, property only one-third which is needed must pay twelve and a half per cent net out of the business.

The fact is palpable that there is far more fine salt blocks than can be used, and hence for this business, according to the ordinary rules of trade they are not worth near their cost. As the undersigned has tried to show through the operations of the Onondaga salt company, this and many other laws of trade have been reversed, and a business a part at least of which if left to the ordinary laws of trade could not be profitable, has been made very profitable mostly out of the pockets of the people of this State, and it is now claimed that the people thus taxed through their agents, this Convention should see to it, that they do nothing to affect these excessive profits or this taxation.

The undersigned knows of no obligation on the part of the State to tax itself, to sustain and make profitable a business not so by natural laws, although, if it fail thus to do, large loss and injury may come upon many of its worthy citizens, and a large and unnatural thriving business be injured thereby.

Nor can any obligation be drawn from the relation between the State as owner of the property, and the manufacturers as lessees. The reason for the depression in the business in 1859, when it was operating under natural laws, was the want of a market, and the increased competition arising from discoveries of salt elsewhere. The State did not guaranty against any discovery of salt at Saginaw or elsewhere. Nor did any obligation arise from want of brine, because at that time owners of salt property could dig their own wells, and the State was under no obligation, legal or equitable, to furnish any more water than was furnished.

There is one other consideration always urged against the increased duty upon salt (referred to in the report of the minority, Mr. Comstock), to which the undersigned begs leave to refer in conclusion on this question. On the supposition that the increase of duty will compel them to abandon part of their market, they allege that the loss to the State in the reduction of tolls on salt, coal, barrels and duty on salt, will be more than the people of this State, within the home market, have been compelled to pay over the cost.

The undersigned has shown that the basis of this position is untrue, that if they are willing to manufacture at a fair profit (and they will be if they cannot get more), all markets now occupied will still be open, and even others.

But admitting the supposition, the conclusion is untrue. The undersigned does not know on what ground such a claim can be made. Except the salt itself, the other articles (coal, barrels, etc.) would be taken elsewhere, and may be farther for other purposes. In addition to this, the advocates for the manufacturers of salt also generally advocate the doctrine that the capacity of the Erie and Oswego canals is about or soon to be reached, and it is submitted that the tolls on salt are not so excessive as to give it a preference over other merchandise. Yet taking the claim as made, let us examine it for a moment. As calculated for the year 1866, it would be:

Net revenues from duty,.....	$31,227 66
Tolls on salt (Maj. Rep., Evid. p. 48),.....	76,653 00
Tolls on coal, .108 (132,508 tons),.....	14,310 32
Tolls on barrels,.....	1,000 00
	$122,190 98
It will not be claimed that over one-half will be lost, which will be,.....	61.095 49
But 960,000 barrels of salt in home market, at $2.35, is,..	$2255,500 00

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It should cost $1.50,.....	$535,000 00	
		297,500 00
Leaving the amount paid by the people over what it is claimed they would lose,.....		$236,404 51

Thus this last claim is not only unfounded, but untrue.

For these reasons the undersigned, therefore, submits that it is just, equitable and right to all parties that the duty on salt should be increased as herein indicated.

Fifth. The salt springs and reservations should not be sold.

In supporting this prohibition, which has always been a part of the Constitution of this State, the undersigned finds himself alone and opposed by all the other members of the committee. Thus alone he feels supported by the uniform action of the people, both in Convention and elsewhere, since the purchase of the springs.

The reasons alleged in the report of the majority for the removal of the constitutional restriction against the sale of the salt springs and reservation are:

1. That the necessity (the want of private capital) which originally required the State to purchase them and aid the manufacturers does not now exist.

2. That new salt formations and springs have been discovered, so that salt is no longer a monopoly, and if tolls and customs were reduced then foreign salt could be furnished to compete.

3. That the manufacturers have now obtained as much control as if they owned them, and the interest on purchase price, if sold, would be much more than present income. Let us consider these reasons.

As to the first, that the object for which the State bought and held this reservation has ceased. The undersigned believes this has not been the only object. The desire to aid in procuring cheap salt was also one of the main objects. But whether that has heretofore been the main object or not, the undersigned claims that it should hereafter be. The people, through its Legislature, have too often allowed their attention to be drawn off from the excessive prices paid in the home market by strong appeals in favor of the increase in the manufacture and consequent increase of duty.

Thus the hope of increasing the production from two to three millions of bushels and thus to add, in the shape of duty, the gross sum of from $20,000 to $30,000 to the revenues of the State, has been the blind behind which the manufacturers have been enabled to extort from the people of that partion of the State where they control the price, the aggregate sum of from $150,000 to $200,000 more than the same quantity netted them sold in other markets.

As to the second reason, that recent discoveries of salt have made it so plentiful that it has ceased to be a monopoly, the undersigned would submit that, except as to foreign salt, the whole history of the salt manufacture in this State and at Saginaw, and all other places denies this supposition. On the contrary, for reasons heretofore stated, the manufacturers of Onondaga salt have not only had a monopoly in the home market, but have also competed with all other salt in their home markets at a fair profit, as they allow, and at a very large profit as the undersigned claims. If, then, Onondaga salt can be made so as to compete with that of other markets so far distant, it can hardly be said that salt of these markets would compete with it in its own home market. The greater bulk and weight and consequent cost of freight, taken in connection with the course of trade from west to east, would and always will entirely forbid this.

But it is alleged that if the customs and canal tolls on foreign salt were reduced to correspond with tolls on other articles of prime necessity, foreign salt from various localities could be sold to the people of Syracuse, "at their own doors cheaper than they now sell their own production." The customs or duties levied by the general government on foreign salt are quite heavy (24 cents per 100 lbs if in sacks or bags, and 18 cents per 100 lbs if in bulk) but on examination the undersigned cannot discover that they are any higher than are levied on the average of articles of prime necessity, and the necessities of the general government will hardly warrant any expectation of any great reduction in duties for several years to come.

Even if it were as alleged, as this State or Convention has no control over those duties, and as the interests of all States should be consulted with regard to these reductions, it would hardly be wise to look for relief from that source. As to canal tolls, the excess of tolls on foreign salt over those on domestic salt from Albany or New York to Syracuse is only five cents per barrel. This deduction would hardly add much to the opportunity for competition.

But when we remember the facts as established, that the salt company (manufacturing salt at the cost and making the dividends as has been stated), in the year 1866, sold in the New York market, in direct competition with foreign salt, nearly 150,000 barrels, and that it cost over fifty cents per barrel to transport and sell the same, the undersigned submits that no change in canal tolls (which is all the State has control of) will afford any relief by way of competition with foreign salt.

Hence the undersigned submits that any person or corporation that may control the Onondaga salt springs can hereafter, as now, always maintain a monopoly in what is called the home market, and dictate the price of this prime necessity to the greater portion of the people of this State, according to their greed for gain, and without reference to cost.

The third reason given for the sale, in the report of the majority, is too true in fact, but the undersigned submits that it is a reason against, rather than for the sale. The Onondaga salt company has, in fact controlled, as though it were owner in fee. But, behind all, was the undoubted power and control of the State, which, although it had been lulled to sleep, yet was well known to the manufacturers to exist, and subject to be called into exercise at any time.

How much the knowledge of this dormant power has prevented the manufacturers from making further demands upon the people of the

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State, in the shape of even higher prices, the undersigned can only conjecture. There is, however, one fact that may throw some light on this subject.

In the year 1862, when, on account of the peculiar and critical condition of our national affairs, the market for salt became such that the Onondaga salt company could dictate almost any price, and did ask and receive $3.25 per barrel, making such profits as to divide $380,000 on a capital of $160,000, it suffered such a rebate on the price of salt sold to the people of this State as to amount to $150,000, which otherwise might have been added to their already large profits. The United States, either directly or indirectly, was compelled to pay a considerable portion of the thus increased cost in the purchase of supplies for its army and navy. Yet, under all these circumstances, the Onondaga salt company did not fail to take advantage of circumstances, and did not allow any consideration of the needs or critical situation of our general government to effect as against its pecuniary interest and profits. If such considerations have no weight, the undersigned submits that it would not be improper to suppose that the only or main consideration which operated to produce this rebate in favor of the people of the State was, that the State owned and could control every thing connected with the salt springs and the manufacture of salt therefrom. In support of this position, the undersigned begs leave to state that he understood the officers of this corporation to admit that in making such rebate, they were not forgetful of its probable influence on what they were pleased to term unfavorable legislation. Again, it is to be inferred from the report of the majority, that all the salt manufacturers are opposed to the sale of the salt springs and reservation.

The undersigned does not understand this to be the fact. On the contrary, the undersigned is informed that the fine salt manufacturers are generally in favor of retaining the prohibition of sale, while the coarse salt manufacturers generally favor the removal of the prohibition, and the sale which they expect may be brought about if not prohibited. The reasons alleged are that the coarse salt manufacturers own more than one-half of the stock, and hence control the salt company. That the salt company, with its already accumulated capital and surplus of about one million of dollars, is the most probable purchaser if a sale should be made, and if thus made the coarse salt manufacturers would have the power to discriminate against the owners of fine salt property. The owners of fine salt property are not inclined to trust to their disposition after they acquire the power. As the interests of the State are much greater than those of the fine salt manufacturers, it hardly seems improper that the true friends of the State should have a feeling like the fine salt manufacturers.

Nor does the undersigned believe this distrust unfounded. On the contrary, he believes it to be well founded, and that if a sale of the salt springs and reservation were made, it is not only probable, but scarcely to be doubted that the Onondaga salt company would become the purchaser. Even if some other person or corporation should become the purchaser it is submitted that the opportunity arising from natural causes, and those beyond the control of this State for the formation and continuance of a profitable monopoly are so great that such opportunity would not be neglected. In such case, the only limit in price of salt sold to the people of this State, within what is called the home market, would be the greed of the seller with little regard to the cost of production. This, we submit, is borne out by the history of the last seven years. The undersigned, therefore, confidently submits that the sale of the salt springs would be a most suicidal policy on the part of the State. Whatever increased revenue was thus obtained would be far more than equaled by the increased price of salt that the people of the State would be compelled to pay.

By a sale, the monopoly would become a fixed fact forever. In order to avoid a temporary evil entirely under control, the remedy proposed by the majority would render it permanent and entirely beyond control. The undersigned has suggested these remedies for the consideration of the Convention, but whether on examination any of them shall be deemed wise or unwise the undersigned submits that it would be clearly unwise for this State to part with a power the shadow of which has already saved $150,000, and to hand over the greater portion of the people of this State, dependent entirely upon some uncontroled monopoly for one of the pure necessities of life, at least as far as the price they must pay is concerned. Hence the undersigned submits that to avoid all doubt as to such a result, the prohibition of sale so long and so wisely continued, as a part of the Constitution of this State, should not now be stricken out

The undersigned submits the following as a proposed section:

SEC. —. The salt springs belonging to this State shall never be sold; but the exclusive control of the same shall be vested in the commissioners of the canal fund. The lands contiguous thereto and property appurtenant shall also be under the exclusive control of the commissioners of the canal fund, to be sold, leased, managed and controlled by it, subject to the following conditions:

1. No person, corporation or association manufacturing salt therefrom shall discriminate in price on the sale thereof to the people of this State or any portion thereof.

2. No person, corporation or association shall either directly or indirectly control more than one-third of salt manufactured or brine taken therefrom, and that all citizens of this State shall be at liberty to go upon, dig for, and manufacture salt on the same conditions, subject to the legal rights of the present lessees.

3. The duty on salt shall not be less than two cents per bushel or its equivalent.

ANGUS McDONALD.

The report was referred to the Committee of the Whole and ordered to be printed.

Mr. ALVORD—The Committee on Revision has instructed its chairman to ask of the Convention the passage of the following resolution:

Resolved, That, under the supervision of its

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chairman, the revised work of the Committee on Revision shall be from time to time printed, so that when such work shall be completed the report of said committee may be made to the Convention in a printed form ready for its consideration.

The question was put on the adoption of the resolution, and it was declared carried.

Mr. SEAVER presented the following report from the Committee on Printing:

The Committee on Printing, to whom was referred the following resolution:

Resolved, That five hundred extra copies of the report of the select Committee on Bribery and Corruption be printed for the use of the Convention—

Beg leave to report, that the expenses already incurred have been much larger than were anticipated, both for printing documents and the publishing of *verbatim* reports of debates, etc., in consequence of the prolonged session of this Convention; that the usual number of copies of the report referred to has been printed for the use of the Convention; the matter has also been published in the two newspapers designated to print the *verbatim* report of the debates and proceedings of this body, for which the Legislature will no doubt provide payment; and thus all needful publicity has been given to it. Your committee, therefore, recommend the rejection of the said resolution.

J. J. SEAVER,
Chairman.
J. M. FRANCIS,
W. H. MERRILL,
A. POTTER.

Mr. OPDYKE—The committee have no desire to get an additional number of the report printed, because it will increase our expenses. But I have ascertained that a large number of the members have not this report on their files of documents, and as there are very few left I suppose it would be proper to provide each member with a copy for his use when the subject comes up for consideration.

Mr. SEAVER—With that explanation from the chairman of the Committee on Corruption [Mr. Opdyke], I would suggest and move that one hundred and fifty extra copies be printed, in order to supply the files.

Mr. M. I. TOWNSEND—I believe that we have not printed extra copies of most of the reports of the committees of this Convention, and I do not see any reason why we should depart from the ordinary course in this case. It is true that it is a subject in which the people of the State are very much interested, and it may be deemed disrespectful to the Convention to bring that subject up. I know it was considered so yesterday, and for that reason I do not see that the printing of an additional number is at all necessary. I do not believe that any thing this Convention has done will tend to frighten away those useful members of our system of legislation that ordinarily visit the capital. And I do not believe it is necessary that this report should be printed and published to assure them that they shall not be molested during the coming winter in the ordinary patriotic work in which they are engaged. The only possible advantage, it seems to me, from publishing the report broadcast is, to show that no action need be expected on the part of this Convention, designed to shut off the patriotic action of the lobby. And as that is not necessary, I, for one, am opposed to incurring this additional expense.

Mr. SEAVER—I will only say that the fact exists that the files are not all supplied, for some reason or other, with this document; and it is only the necessity of completing the files that induces me to move this extra number.

The question was put on the adoption of the report of the committee, as amended by its chairman, and it was declared carried.

Mr. MERRITT—I have been informed by the chairman of the committee raised at the time this special order, in reference to the meetings of the Convention, elsewhere than in the Capitol, was fixed, that they will not be able to report to-day, and therefore, out of deference to that committee, I move that the further consideration of this resolution be postponed until to-morrow.

The question was put on the motion of Mr. Merritt to postpone, and it was declared carried.

Mr. ARCHER offered the following resolution:

Resolved, That the Comptroller be requested to pay from the contingent fund of the Convention, for fifty copies of the Manual, or such number, not exceeding fifty, as the clerk of this Convention shall certify to have been furnished the Constitutional Conventions in other States and the compiler of the Manual.

Which was referred to the Committee on Contingent Expenses.

Mr. ARCHER offered the following resolution:

Resolved, That the printer to the Convention is hereby directed to bind the debates of this Contion in such sized volumes as the Secretary shall designate.

Which was referred to the Committee on Printing.

Mr. MAGEE offered the following resolution:

Resolved, That the amendment offered by Mr. Magee to section 15 of the report of the Committee on Finance, relating to taxation, be referred to the Committee on Revision, with power, etc.

Mr. MAGEE—I would not now, if I were permitted, occupy the time of this Convention by submitting the remarks which I desire to submit in support of the amendment which I have offered. I will waive that until a future, perhaps more propitious occasion than the present one.

Mr. E. BROOKS—Before this is referred to the Committee on Revision with power, I hope it will be before the Convention, and I ask that the amendment referred to by the gentleman [Mr. Magee] may be read.

The amendment was accordingly read by the SECRETARY.

The question was put on the motion to refer, and, on a division, it was declared lost by a vote of 41 to 52.

Mr. FOLGER offered the following resolution:

Resolved, That debate in the Convention upon the report of the Committee on Judiciary, be limited to ten minutes to each speaker upon each proposition, and that no one member speak more than once on any proposition.

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The question being put on the adoption of the resolution, it was declared carried.

The Convention then proceeded to the consideration of the report of the Committee on the Judiciary as amended in the Committee of the Whole.

Mr. FOLGER—I understand that the report is not yet printed, but it will be here by twelve o'clock. I move a postponement of the report until twelve o'clock, or until the document arrives.

Mr. E. BROOKS—I suggest to the mover that he allow us to take up the report of the Judiciary Committee where it was left off last night in Committee of the Whole and read it through. That part of the report has not been acted upon in Committee of the Whole.

The PRESIDENT—If there be no objection that order will be made.

The SECRETARY read the following section:

SEC. 22. The electors of the several towns shall, at their annual town meeting, and in such manner as the Legislature may direct, elect justices of the peace, whose term of office shall be four years. In case of an election to fill a vacancy, occurring before the expiration of a full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the peace and judges or justices of inferior courts, not of record, and their clerks, may be removed after due notice, and an opportunity of being heard in their defense by such county, city or State courts, as may be prescribed by law for causes to be assigned in the order of removal.

Mr. COOKE—I offer the substitute that I offered last night in Committee of the Whole.

The SECRETARY read the amendment as follows:

Justices' courts of inferior jurisdiction, shall be established by law. Such courts shall have civil jurisdiction in actions for the recovery of money only, or for the recovery of specific personal property when the damages or the value of the property claimed shall not exceed fifty dollars. The justices chosen to hold such courts shall have such criminal jurisdiction as has heretofore been possessed by justices of the peace.

Mr. BICKFORD—I wish to make an inquiry as to what would be the effect of the construction now to be had under this section. Will it be final, or will the section be subject to a further review in the Committee on Revision?

The PRESIDENT—There will not be another review unless it is specially ordered.

Mr. BICKFORD—I simply wish to say with reference to this amendment moved by the gentleman from Ulster [Mr. Cooke], that I think it had better not be adopted; I think this section had better remain as it is at present. I do not know that there is any desire on the part of the people for any change in relation to justices of the peace as they now exist, and as their courts are now organized.

The question was put on the adoption of the substitute offered by Mr. Cooke, and it was declared lost.

There being no further amendment offered to the section, the SECRETARY read section 23 as follows:

SEC. 23. All judicial officers of cities and villages, and all such judicial officers as may be created therein by law, shall be elected or appointed at such times, and in such manner, as the Legislature may direct, except as herein otherwise provided.

There being no amendment offered to this section the SECRETARY read section 24 as follows:

SEC. 24. Clerks of the several counties of this State shall be clerks of the supreme court, with such powers and duties as shall be prescribed by law. The clerk of the court of appeals shall keep his office at the seat of government. His compensation shall be fixed by law and paid out of the public treasury.

Mr. BICKFORD—Will it not be necessary also to declare that the clerks of the counties shall also be clerks of the county courts? I move to amend by adding after the words "supreme court," in the second line, "and of the county courts of their respective counties."

The question was put on the motion of Mr. Bickford, and it was declared lost.

There being no further amendment offered, the SECRETARY read section 25, as follows:

SEC. 25. No judicial officer, except justices of the peace, shall receive to his own use any fees or perquisites of office; nor shall any judicial officer in the State, except a county judge, or surrogate, or special county judge or surrogate, or justice of the peace, or police justice; nor shall any judicial officer in the city of New York or in the city of Brooklyn, practice as an attorney and counselor at law in any court of record in this State, or act as referee.

Mr. MERWIN—It seems to me that the section as it now stands is too general in its character, and that the exception will not include all the judicial officers desired to be excepted. I think the object could be attained by an amendment in this way: Strike out all after the word "shall," in line three, down to and including the word "justices," in the fifth line, and insert "any judge of the court of appeals or of the supreme court," so that the section will read, "nor shall any judge of the court of appeals or of the supreme court, nor shall any judicial officer in the city of New York," etc.

The question was put on the amendment of Mr. Merwin, and it was declared carried.

Mr. ROBERTSON—I propose an amendment which I suppose may be made by the Committee of Revision, but I think it would make this proposition much clearer; to put first the prohibition in regard to judicial officers in the city of New York or the city of Brooklyn, and to put the other clause afterward, so that it would read in this way; "No judicial officer in the city of New York or in the city of Brooklyn, and no judicial officer in the rest of the State, except justices of the peace, shall receive to his own use," etc. The awkwardness of the punctuation there makes some little difficulty in regard to the application of the last phrase, "practice as an attorney or counselor at law," in reference to both sections of this amendment. I offer the amendment that I have suggested, unless some reason is shown why the change should not be made.

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Mr. FOLGER—I do not see any necessity of that change. The section embraces two prohibitions, one against receiving fees and perquisites, and the other against practicing as attorneys and counselors. Now, the first proposition is general, that no one except justices of the peace shall receive to his own use any fees or perquisites of office. That is a single proposition which it seems to me is conveyed to the mind definitely by the language used. Then the section goes on to say, "nor shall any judicial officer in the city of New York or in the city of Brooklyn practice as an attorney or counselor at law, in any court of record in this State, or act as referee;" and that provision also seems to be quite definite and unmistakable.

Mr. ROBERTSON—I was wrong in stating the place where I should move to insert it. What I wish to do is, to make it read so that the prohibition in regard to local judicial officers in the city of New York and the city of Brooklyn shall be first, and the general prohibition in regard to judicial officers in the rest of the State, second.

Mr. FOLGER—As a mere matter of taste, I have no objection to the change.

Mr. ROBERTSON—It seems to me that the change would make the meaning clearer, but I will withdraw the amendment.

Mr. MURPHY—I would like to inquire of the chairman of the committee why this discrimination is made against the cities of New York and Brooklyn? For one, I am opposed to having a constitutional provision applied to one part of the State and not to another part of the State. If this rule is good with regard to the city of New York and the city of Brooklyn, it is also good with regard to the country.

Mr. FOLGER—If the gentleman will look at the section carefully, he will see that the discrimination is not so great as he supposes. Every judicial officer in the city of New York or in the city of Brooklyn is prohibited from practicing as attorney or acting as a referee. Every judicial officer in the country is under the same prohibition, except the county judge and surrogate or the police justice. Now, the reason for this exception is, that if, in the country, you should prohibit a county judge from acting as a counselor at law, you would never get a county judge from the legal profession; but in the cities of New York and Brooklyn a man who holds the position of judge or of surrogate has as much as he wants to do or as he ought to do, because the business of those cities is amply sufficient to occupy the attention and abilities of any man, and the emoluments of each of these offices are also ample. But it is not so in the country, and you would not be able to get a fit man for judge at all if you extended this prohibition to those officers in the country. The exception is not made in a spirit of invidious local discrimination, but only to meet the circumstances of the case.

Mr. MURPHY—The statement of the chairman of the committee [Mr. Folger], in regard to the difficulty of getting gentlemen to act as county judges in the country, under such circumstances, may be true, but I do not see that the reason that he gives for prohibiting these officers in New York and Brooklyn from practicing as counselors or as referees has any force whatever. As I understand the gentleman, the reason he gives is that in those cities these officers will have too much to do to be able to practice as attorneys or counselors. Now, that is a private, personal consideration, and one which, it seems to me, should not now be regarded in the framing of a Constitution.

Mr. FOLGER—One word further. The object of the committee was to reach what I think the profession throughout the State will regard as an evil—the practice of judicial officers acting as referees by order out of their own courts, or practicing in other courts whereby there may be created a reflex influence from one bench to another. The standing committee sought to avoid that, and sought to avoid it by adopting general terms which would cover the whole State. But then the query came up, "if you adopt these general terms, and cut off all judicial officers from acting as counselors or referees, do you not deprive the bench of the surrogate's court, and of the county courts in the rural districts, of the services of competent men?" For a good lawyer will not take a position which will disqualify him for practice when the position itself is of small emolument. And it was decided that that was so, and that no man would take the office of surrogate or county judge in the country if he were thereby prohibited from practicing as attorney or acting as a referee. So we went as far as we safely could, and stopped just short of what we regarded as the greater evil.

Mr. MURPHY—I now move to strike out, commencing with the word "law," down to and including the end of the section. I do so for the reason that I have already given. I am opposed to this discrimination between the city and the country. Here is an evil which the gentleman [Mr. Folger] says ought not to be permitted. But he says that if the prohibition be made general a greater evil will arise, viz.: that you cannot get gentlemen to act as county judges in the country, though in the cities you may. Now, sir, there has always been a reason given for thus discriminating between the city of New York and the country; but such discriminations have brought upon us untold evils. If it is an evil in principle to permit these officers to act as referees or counselors at law, the prohibition should be applied equally to the whole State, and no mere matters of personal convenience or practical convenience should be allowed to interfere in the adoption of a provision so important. I shall therefore insist upon a vote upon this amendment.

Mr. VAN COTT—I would have been glad if my colleague [Mr. Murphy] had told us whether he thought there was a good reason in principle for prohibiting judges of the supreme court of the city of New York from practicing as counselors at law, or as referees; because if there is a principle for such prohibition, he ought not to have moved the amendment that he has offered here, but his amendment should have been to include the country officers within the prohibition, and not to exclude those of the city. Now, sir, within my own personal experience there have been very great abuses from allowing judges of the courts to act as counselors at law. I would mention a

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very gross case where a judge having a question of law under consideration, on a motion for a new trial, was retained by one, the counsel of one of the parties in another case of the same character and on the same side, so that his interests were at once involved with the interests of that particular side of the case, and the effect of it was palpable in the decision that he rendered on the motion for a new trial. I mention this merely as a single case, and such cases are of frequent occurrence. It is a common thing in the country for judges not to have time to try their cases at circuit or at special term, but to have time to try some of the same cases as referees, which I think is a very great abuse, and tends to the degradation of the judiciary in the judgment of all reflecting men. Now, sir, I think the principle of exclusion right, and I also think this discrimination is right, because the cases tried in the county courts and in the surrogates' courts in the country are so infrequent and of such a character that this complication of the interests of the judge with the interests of the case is not apt to occur. And there is a reason for the discrimination in this, that a judge in the city with a large amount of business to transact, and a large salary, has not the same justification for turning from the performance of his public duties to the dispatch of private business, as a judge in the country has. A county judge in some counties takes a salary, from two hundred and fifty to a thousand dollars a year, and performs the duties of his office for the accommodation of the bar and of the people, and because he receives a mere pittance for the performance of his public duties, he ought not to be excluded from practicing his profession. If he were so excluded, as has been said here, it would be almost impossible to get a good lawyer to take the place of a county judge, or of a surrogate in the country. Now, I am not alarmed at discriminations where reasons for them exist. It would really be inconsistent, and a more marked discrimination, to apply the same rule to different circumstances. We are entirely consistent when we say that one set of circumstances in the city requires one rule, and that another set of circumstances in the country requires another rule—in each case adapting the rule to the peculiar circumstances; and this mere general technical idea, that you must have a uniform law applying throughout the State under all circumstances, however different, has, I think, already been pressed quite beyond its legitimate application, on various occasions in this Convention.

Mr. GRAVES—Is an amendment now in order?

The PRESIDENT—An amendment will be received.

Mr. GRAVES—I move to strike out after the word "officer," in the fifth line, these words, "In the city of New York, or in the city of Brooklyn," and to insert, "except county judge and surrogate;" so that it will read, "Nor shall any judicial officer except a county judge and surrogate practice as an attorney or counselor at law in any court of record in this State, or act as referee."

Mr. FOLGER—The gentleman from Kings [Mr. Murphy] moved to strike out the same words which the gentleman from Herkimer [Mr. Graves] moves to strike out.

Mr. GRAVES—I would include in my amendment justices of the peace.

The PRESIDENT—The proposition of the gentleman from Herkimer [Mr. Graves] differs from the proposition of the gentleman from Kings [Mr. Murphy] in that respect.

Mr. EVARTS—The amendment of the gentleman from Herkimer [Mr. Graves], as now made, to exclude justices of the peace, is certainly equivalent to the amendment of the gentleman from Kings [Mr. Murphy]. The gentleman from Kings moves to strike out that portion of the section which makes a distinction between the provision for the cities of New York and Brooklyn and the provision for the rest of the State. The gentleman from Herkimer moves to insert in the inhibitions in the city of New York and the city of Brooklyn the same exceptions that are proposed in the inhibitions against officers in the rest of the State. Certainly the amendments are substantially the same. Now, in regard to the amendment itself. The result of the labors of the committee and of the Convention, if the amendment of the gentleman from Herkimer [Mr. Graves] shall prevail, will be to put into the Constitution a license to the surrogate of the city of New York and the surrogate and the county judge of the county of Kings to practice law and act as referees. Better take the amendment in the shape that the gentleman from Kings [Mr. Murphy] proposes it, and have no discrimination in terms or in form.

Mr. M. I. TOWNSEND—Will the gentleman from New York [Mr. Evarts] allow me to inform him that the proposition of the gentleman from Kings [Mr. Murphy] is to strike out the whole of the remainder of the section from the point at which he takes it up, and not merely to strike out the words specially relating to New York. His amendment would allow even the judges of the supreme court to practice law.

Mr. EVARTS—I do not so understand it.

Mr. M. I. TOWNSEND—It is so. I am satisfied that I understand it correctly.

The PRESIDENT—Will the gentleman from Herkimer [Mr. Graves] please restate his amendment?

Mr. GRAVES—It is to amend so that it will read, "Nor shall any judicial officer except the county judge or surrogate, or justice of the peace practice as an attorney or counselor at law in any court of record in this State, or act as referee."

Mr. EVARTS—That is a difference between police justices in the State and police justices in the city; that is all. Now, as has been stated by the chairman of the Judiciary Committee, the ground of discrimination is simply this: not that we make distinctions between the rest of the State and the crowded populations of Brooklyn and New York, but that we recognize distinctions that have been made by the arrangements of population. As a matter of principle we would gladly exclude from acting as referees or practicing as attorneys or counselors at law, all persons holding judicial offices in any part of the

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State, and that is the precise provision of this section; and in regard to the cities of New York and Brooklyn, we see no reason why the exclusion should not be general, because the judicial officers for those large populations have both business enough to occupy their whole time, and salary enough to compensate them. In looking through the State, however, we find certain inferior local judicial officers who, it is well understood, do not have enough of judicial business to occupy any very large part of their time, and yet they are necessary officers in their respective localities. The small amount of business devolving upon these inferior judicial officers in the country, leads to their small compensation, which is really compensation for but a small portion of their time, and we see, therefore, that we must adopt either a rule that will exclude from such public offices persons of the learning, experience and faculty required to discharge the duties of their offices properly, or else we must allow these gentlemen to exercise their professional faculties outside of their official spheres. In this provision we simply recognize the differences that are made by differences in population, and we have formed our exceptions to the general object we have in view, according to the different circumstances of different populations and localities.

Mr. MURPHY—I find that the amendment which I offered does not exactly accomplish the object I had in view, and therefore I will amend it. My amendment is to strike out the words, "any judicial officer in the city of New York or in the city of Brooklyn," so that the section will read: "Nor shall any judicial officer in the State practice as an attorney or counselor at law in any court of record in this State, or act as referee."

Mr. SPENCER—I offer the following amendment: After the word "State," in the third line, insert the words "specified in this article," so that the provision will read: "No judicial officer except justices of the peace shall receive to his own use any fees or perquisites of office, nor shall any judicial officer in the State specified in this article," etc. My object in offering this amendment is to provide for a possible case where the Legislature may authorize some other judicial officer, having inferior jurisdiction, to those here specified in this article. I do this for the reason that a difficulty has arisen under the present Constitution in regard to such officers. An attempt has been made in two or three instances to establish police justices in villages with civil jurisdiction, and the attempt has been resisted upon the ground that the power was conferred upon the Legislature to create courts of inferior jurisdiction to the implied exclusion of the powers to create such courts elsewhere. Under the provision which is embraced in the twenty-third section of this article, all judicial officers of cities and villages, and all such judicial officers as may be created therein by law shall be elected at such times and in such manner as the Legislature shall prescribe. It was held that this section was opposed to such exclusion; and that the Legislature consequently had the power to create these courts of inferior jurisdiction, and under the article now under consideration such courts undoubtedly may be created. By confining the provision to the officers specified, any difficulty on this ground may be obviated.

The question was put on the amendment of Mr. Spencer, and it was declared lost.

Mr. MURPHY—I propose a further amendment in the third line, to strike out the words "in the State," and to strike out from and including the word "nor," in the fifth line, to and including the word "Brooklyn," in the sixth line, these two amendments to go together as one. The effect of that will be to allow county judges and surrogates in all parts of the State to practice as counselors at law, giving those officers in New York and Brooklyn the same right as in all other parts of the State.

Mr. MERWIN—I would like to suggest to the gentleman from Kings [Mr. Murphy] that the words "in the State" have already been stricken out, and the section as it now stands reads "nor shall any judge of the court of appeals, or of the supreme court, or any judicial officer," etc.

Mr. MURPHY—When was that stricken out?

Mr. FOLGER—It was stricken out on the motion of the gentleman from Jefferson [Mr. Merwin], on his amendment to the gentleman's [Mr. Murphy's] amendment.

Mr. MURPHY—My desire is that we should be consistent, and make this provision generally applicable, but I withdraw the amendment.

Mr. A. J. PARKER—I wish to offer a further amendment to this section. The article in the Constitution of 1846 relating to the administration of justice has not been included in the article reported by the committee. It was the tenth section of the Constitution of 1846, as follows: "The testimony in equity cases shall be taken in like manner as in cases at law."

Mr. FOLGER—I would suggest to the gentleman from Albany [Mr. A. J. Parker] that that would come in under general amendments, and more appropriately as a section by itself. I do not believe there would be any objection to inserting it as a separate section.

Mr. A. J. PARKER—I will leave it, then, till it can be moved under that head.

A DELEGATE—I would like to hear the section read as amended.

The SECRETARY read the section as amended as follows:

"No judicial officer, except justices of the peace, shall receive for his own use any fees or perquisites of office, nor shall any judge of the court of appeals or of the supreme court, nor shall any judicial officer in the city of New York or in the city of Brooklyn, practice as an attorney or counselor in any court of record in this State or act as referee."

Mr. E. A. BROWN—If I understand the section as it has been amended, it leaves the judges of the superior court at Buffalo the liberty to practice law. There is nothing to prohibit judges of that court from practicing as attorneys or counselors, and I move to amend so as to make the prohibition applicable to them.

Mr. EVARTS—If the gentleman will allow me, I desire to make a suggestion. Gentlemen will see, as the gentleman from Lewis [Mr. E. A. Brown] has suggested, in regard to the superior

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court of Buffalo, that the judges of the court of common pleas in the city of New York are left at liberty to practice law.

Mr. FOLGER—Oh, no; they are excluded by the sixth line.

Mr. DALY—If the gentleman from New York [Mr. Evarts] will allow me to make a statement, I will say that the judges of the superior court in the city of New York and of the court of common pleas are prohibited by the judiciary act of 1846 from practicing as lawyers.

Mr. EVARTS—That is very proper; but this is a constitutional provision that we are now speaking of.

Mr. FOLGER—I move to reconsider the vote by which the amendment of the gentleman from Jefferson [Mr. Merwin] was adopted. That will remedy the difficulty.

The PRESIDENT—That motion can only be now considered by unanimous consent.

Mr. MERWIN—I object.

Mr. MURPHY—I would like to inquire why were not the judges of the superior court of Buffalo also included in this provision?

Mr. FOLGER—I would inform the gentleman that they are excluded from practicing by the provision beginning on the second line, "nor shall any judicial officer in the State," etc. Putting it in that form left the section comprehensive, including every thing that was not specially excepted. The amendment of the gentleman from Jefferson [Mr. Merwin] to strike out the words he suggested deranged that plan.

Mr. VAN COTT—I move to insert in the sixth line, after the word "Brooklyn," the words "or in the city of Buffalo."

Mr. FULLER—I hardly think that that amendment is necessary. The superior court of the city of Buffalo is of the same character as a county court. The judges have not as much business as will fully occupy their time, and it has been the practice to refer causes to them from the supreme court, and they act very frequently as referees in Buffalo. It is a great convenience to the people and to the bar.

Mr. BARKER—I hope the prohibition will not be extended to the judges of the superior court of Buffalo. Those judges are on a small salary, and they do a great deal of referee business in a manner generally acceptable to the people of the western part of the State. They often go beyond their own counties to act as referees, and I hope that this restriction will not be applied to them.

Mr. EVARTS—I cannot think that there is any soundness in the reasons given for permitting the judges of the superior court of Buffalo to act as referees. If there be any merit in the proposition that any of these judges should be prohibited from practicing law or acting as referees, it is equally applicable to the judges of the city of Buffalo as to the judges of the city of New York. I think that here the principle of uniformity entirely applies. If you need a local court in Buffalo to be fixed in the Constitution, then that court is important enough to take the services of the judges named for it, and we should not allow them to mix their interests with the business of referees or the practice of the law.

Mr. M. I. TOWNSEND—I think that the reasoning of the gentleman from New York [Mr. Evarts] may, very possibly, not apply with full force to this case. We have, in the Constitution created a county judge for the county of Erie, and have left the county judge of that entire county, including the city of Buffalo, at liberty to practice law. Why then, should not the judges of only local jurisdiction in that city be allowed to practice law, and especially why should they not be permitted to act as referees if their business, as is alleged by gentlemen, better acquainted with the facts than I am, is of moderate extent. It appears that these judges acting as referees afford great accommodation to suitors in that city, and it seems to me that unless their duties are so great as to exclude them from the transaction of other business, there is no principle involved here which should prohibit them from doing what the county judge of the county of Erie may do.

The question was put on the amendment of Mr. Van Cott, and it was declared carried.

Mr. MURPHY—I think there are other localities in the State that ought to have the benefit of this provision. I suppose that in the county of Monroe, in the city of Rochester, there is quite as much business as the judges of the court can perform, enough to occupy all their time. I think also that this is probably the case with the city of Albany. I am now on a matter of principle. This general reservation of the rest of the State except the cities of New York and Brooklyn, and now the city of Buffalo, seems to me improper. I would suggest that we make a general exception of the judges in all those counties where there are incorporated cities.

The question was put on the amendment of Mr. Murphy, and it was declared lost.

Mr. M. I. TOWNSEND—I desire to move a reconsideration of the vote by which the amendment of the gentleman from Kings [Mr. Van Cott], including the city of Buffalo, was carried.

A DELEGATE—I object.

The PRESIDENT—Objection being made, the motion to reconsider lies on the table under the rule.

There being no further amendment offered to the twenty-fifth section the SECRETARY read section 26 as follows:

SEC. 26. The Legislature may authorize the judgments, decrees and decisions of any local inferior court of record, of original civil jurisdiction, established in a city, to be removed for review, directly into the court of appeals.

There being no amendment offered to the twenty-sixth section the SECRETARY read section 27 as follows:

SEC. 27. The Legislature shall provide for the speedy publication of all statute laws, and of such judicial decisions, as it may deem expedient. And all laws and judicial decisions shall be free for publication by any person.

Mr. BALLARD—I move to amend this section by inserting after the word "expedient" in the third line, the words "and also the appointment of a reporter of the supreme court." It is obvious to every member of the bar in this body, that there needs to be some improvement in the

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character of the reports of the supreme court. They are now under the proper control of the court itself. The reports are published indiscriminately. Members of the bar send decisions to the reporter to be reported, and they are reported without the knowledge of the court until they appear in print. Now, my proposition is, that, the Legislature shall provide by law for the appointment of a reporter. It will be remembered that one of the standing rules of the supreme court now is, that the judges shall meet every two years and revise the rules, and the Legislature may clothe them with power to appoint the reporter at this meeting, or may make such other provisions as they think the case requires; but it does seem to me that there should be some discrimination exercised in regard to the appointment of the reporter, so as to avoid the multiplication of reports, many of them unreliable, that we now have. I will not enlarge upon this matter because this view must be obvious to every one. I would add that, in the third section, we have provided for the appointment of a reporter by the court of appeals. They appoint their own reporter, but I think it would be better to allow the Legislature to provide for the appointment of a reporter for the supreme court, because there are several parts of the supreme court.

Mr. HALE—I move to amend the proposition of the gentleman from Cortland [Mr. Ballard] by inserting after the word "appointment," in his amendment, the words "by the court or the justice thereof, designated to hold general terms." My object in this amendment is that, if it is thought best that the reporter of the decisions of the supreme court shall be appointed, it shall be incumbent upon the Legislature, in providing for that, to have some person designated who will be approved of by the court; and it seems to me that, with such a qualification, the amendment proposed by the gentleman from Cortland [Mr. Ballard] may be of great value to the provision in guarding against the reporting of all the decisions of the supreme court, and giving us only a selection of the cases decided.

The PRESIDENT—The Chair does not think the amendment of the gentleman from Essex [Mr. Hale] germane to the proposition of the gentleman from Cortland [Mr. Ballard].

The question was put on the amendment offered by Mr. Ballard, and it was declared adopted.

Mr. SPENCER—I move to strike out of the second and third lines these words, "and of such judicial decisions as it may deem expedient." I cannot see any necessity for imposing an injunction upon the Legislature to cause the publication of the judicial decisions of this State. There has been complaint here that the decisions published were altogether too numerous, and too bulky, and certainly our experience is, that they will come thick and fast enough without any such constitutional injunction as this.

Mr. HALE—I now move the amendment which I moved as an amendment to the proposition of the gentleman from Cortland [Mr. Ballard], to insert after the word "appointment," in his amendment as adopted, the words, "by the justices of the supreme court designated to hold general terms."

Mr. BALLARD—I do not disagree with the gentleman from Essex [Mr. Hale] in regard to the propriety of the appointment of the supreme court reporter, but it seems to me that, it is better to leave it with the Legislature, and let a proper law be passed designating by whom the reporter shall be appointed. The judges of that court have a rule to meet every two years for the revision of the rules. But there has not been a meeting of the supreme court judges for several years, and, inasmuch as that meeting has been neglected, it may be deemed wise to have the reporter appointed by some State officer, or by the Governor and some State officer. But, at all events, my view is that it should be left with the Legislature, rather than tied up in the Constitution.

Mr. HALE—The reason I offer this amendment is that we have had some experience of the practical working of appointments by the Legislature. The Legislature provide without any restrictions for the appointment of a reporter. They have had that power heretofore, in regard to the appointment of the reporter of the court of appeals, and the consequence has been that, in some instances, reporters have been appointed who were not satisfactory to the judges of the court of appeals, and some dissatisfaction has been felt in the profession at some of the appointments made. I submit it is better that the judges themselves should have the appointment, and the only way to secure that is to put into the Constitution, that in making the provision for the appointment of the reporters of the supreme court, the Legislature shall provide that they shall be appointed by the judges.

The question was put on the amendment of Mr. Hale, and it was declared carried.

Mr. S. TOWNSEND—I offer the following amendment: After the word "publication," in the second line, insert the words "in a weekly State paper, a file of which shall be furnished to each school district library." My honored colleague from Richmond, and also my respected friend from Erie who is now absent, both objected to such publication on the ground of expense. Now, I suppose these weekly papers could be had at the rate of a dollar a copy per year; that would be a cost of some fifteen thousand dollars to the State; but what would that sum be compared with the good that might be effected by carrying to the knowledge of every citizen the daily transactions, or at least the weekly transactions, of their representatives here? How is it possible for our people to have any knowledge of what is going on in the Legislature without some such provision? Take, for instance, the law in reference to working upon roads, the law in reference to animals found astray, and other laws of that character which are of direct interest to the people in the country. I believe I am not exaggerating the fact when I say that one or the other of these laws is sometimes tinkered as often as four times in one session, and how are we to know what the laws are unless they are published? What has a greater tendency to foster disrespect for all laws than to neglect to bring them to the knowl-

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edge of the people? I believe, sir, that one of the most wholesome provisions we could enact would be a provision for the prompt publication of the laws.

The question was put on the amendment of Mr. S. Townsend, and it was declared lost.

There being no further amendment offered to the section, the SECRETARY read section 28 as follows:

SEC. 28. The first election of judges of the court of appeals and of justices of the supreme court, and of judges of the superior court and court of common pleas of the city and county of New York, and of the superior court of the city of Buffalo, shall take place at such time as the Legislature shall prescribe between the first Tuesday of April and the first Tuesday of June, 1868. The said courts and the commissioners of appeals shall respectively enter upon their duties on the first Monday of July next thereafter.

Mr. FOLGER—The adoption of the amendment by which the present judges of the supreme court and justices of the superior court are continued in office make a part of this section unnecessary; and there should be also a change of the kind I mention in line seven. I move to strike out "eight," in that line, and insert "nine." I move, also, to strike out from the word "and," in line two, down to and including the word "Buffalo," in line four.

The question was put on the motion of Mr. Folger, and it was declared carried.

Mr. FOLGER—I move to strike out "said courts," in line eight, and insert "court of appeals."

The question was put on the motion of Mr. Folger, and it was declared carried.

There being no further amendments offered to the section, the SECRETARY read section 29 as follows:

SEC. 29. On the first Monday of July, one thousand eight hundred and sixty-eight, jurisdiction of all suits and proceedings then pending in the present supreme court shall become vested in the supreme court hereby established. Proceedings pending in county courts and in suits originally commenced in courts of justices of the peace shall be and remain in the county courts as is now provided for by law. The courts of oyer and terminer hereby established shall, in their respective counties, have jurisdiction on and after the day last mentioned of all indictments and proceedings then pending in the present courts of oyer and terminer. Indictments and proceedings pending in the court of general sessions of the peace in the city of New York shall be and remain in the said court, subject to all provisions of law relating thereto. Indictments and proceedings pending in the courts of sessions in the several counties of this State shall be and remain in the said courts, subject to all provisions of law relating thereto.

Mr. FOLGER—I move that the word "eight" be stricken out of line two, and the word "nine" inserted.

The PRESIDENT—There being no objection, that amendment will be made.

There being no further amendment offered to the section, the SECRETARY read section 30 as follows:

SEC. 30. The judges of the present court of appeals, and the justices of the present supreme court, are hereby declared to be severally eligible to any office at the first election under this Constitution.

There being no amendment offered to the section, the SECRETARY read section 31 as follows:

SEC. 31. County judges, justices of the peace, and coroners in office when this Constitution shall take effect, shall hold their respective offices until the expiration of the term for which they were respectively elected.

Mr. C. C. DWIGHT—I offer the following amendment to this section. To insert the word "surrogate" after the words "county judges." I am aware that an amendment accomplishing the same purpose was proposed and adopted in Committee of the Whole last night, to another section, but this is the section to which it manifestly belongs. Therefore I offer it here.

Mr. EVARTS—It is the surrogate of New York that is provided for in that section.

Mr. C. C. DWIGHT—It seems to me the next section relates to the surrogate of New York.

Mr. EVARTS—I agree that the amendment of the gentleman from Cayuga [Mr. C. C Dwight] seems to be a proper disposition of the subject.

The question was put on the amendment of Mr. C. C. Dwight, and it was declared adopted.

Mr. BICKFORD—There will need to be, I apprehend, a provision inserted in regard to local officers to discharge the duties of county judge and surrogate. They might be constitutionalized out of office unless protected by this or some other section. I therefore move to insert after the words "justices of the peace" the words "local judicial officers."

Mr. BARKER—I would amend by inserting "special county judges."

Mr. BICKFORD—I accept that amendment.

Mr. FOLGER—The same phrase is used in section 20. The gentleman from Jefferson [Mr. Bickford] has the proper word.

Mr. EVARTS—Judicial officers in general are covered by section 32. It may be the gentleman from Jefferson is right in supposing that special mention needs to be made of special county judges. But general local judicials are disposed of by section 32.

Mr. FOLGER—The gentleman from New York [Mr. Evarts] is slightly in error. Local courts in cities and villages are referred to, but there are local officers in counties, and it is to them that the amendment of the gentleman from Jefferson [Mr. Bickford] refers.

The question was put on the amendment of Mr. Bickford, and it was declared carried.

There being no further amendments offered to the section, the SECRETARY read section 32 as follows:

SEC. 32. All local courts established in any city or village, including the surrogate's court of the county of New York, shall remain until otherwise directed by the Legislature with their present powers and jurisdiction; and the judges of such courts, and any clerks thereof, in office on the first day of January, one thousand eight hundred and sixty-eight, shall continue in office

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until the expiration of their terms of office, or until the Legislature shall otherwise direct.

Mr. EVARTS—I can see no reason for including laws which refer to the surrogate of the city and county of New York, now that provision has been made for the surrogates by the amendment of the thirty-first section. There is another amendment, I would suggest, and that is to insert at the end of the first line, so that it will read as follows: "all local courts established in any city or village, not in this article especially provided for," because the fifteenth section, contains all special provisions for the local courts of the city of New York, and the city of Buffalo. The amendment is to strike out the words, "including the surrogate's court, of the county of New York," and inserting in lieu thereof, "not in this article especially provided for."

Mr. ROBERTSON—I move to strike out the words, "surrogate's court," and insert the words "general sessions of the peace."

The question was put on the amendment of Mr. Robertson, and it was declared lost.

The question was then put on the amendment of Mr. Evarts, and it was declared carried.

Mr. FOLGER—In line six I propose to amend by striking out the number "8" and inserting "9."

There being no objection, the section was so amended.

There being no further amendment offered to the section, the SECRETARY read section 33 as follows:

SEC. 33. The Legislature may create probate courts, abolish the office of surrogate, confer upon existing courts the powers and duties of surrogate and the jurisdiction of surrogates, create registers of wills and of the probate thereof, and of letters of administration, and provide for the trial by jury of issues in surrogates' courts, and in courts having the like powers and duties.

Mr. E. BROOKS—I move to strike out the thirty-third section. It seems to me the powers made in this section are covered by the previous section, which has just been read, and by other sections. I do not see the need of retaining it. It is cumbersome, and all the powers which adhere to the Legislature are expressly provided in other parts of the article.

Mr. FOLGER—I think the gentleman is in error. This article has arisen from the demand which has been made upon the Legislature from time to time for the creation of additional surrogates' courts in the city of New York. Applications were made not only from the bar of that city, but also from some gentlemen who have held the office of surrogate, for an additional force in the surrogate's office. The plan proposed was for two additional surrogates for the city of New York, dividing the city into three divisions by geographical lines. The query was raised and affirmatively answered, that there was no power in the Legislature to create additional surrogates' courts in that city, that the language of the Constitution inhibited it. There must, by its provision, be one surrogate's court for each county, and no more. We should not deprive the Legislature of the power of meeting the demand for an additional force in the probate court in that city. This section is proposed for the purpose of meeting that necessity and enabling the Legislature, at its leisure, with due deliberation, to create a probate court, calling it a surrogate's court or a probate court, or by whatever other names and with such additional other powers as may be necessary, especially that for the trial of issues which are raised in surrogates' courts and tried by juries instead of surrogates, besides many other things. It seems to me an important and necessary power to give to the Legislature, that of providing for just such an exigency as has been represented to exist in the city of New York.

Mr. ALVORD—I would suggest an amendment in the fourth line, by striking out the word register and inserting the word registrar.

There being no objection, the amendment was made.

Mr. LIVINGSTON—I would like to ask, whether the Legislature have not the power, under any additional provision, to direct a trial by jury in a surrogate's court, and also to confer upon surrogates' courts the jurisdiction over real estate, if it is deemed advisable.

Mr. FOLGER—I do not feel entirely satisfied to answer that question, either in the affirmative or negative.

Mr. C. L. ALLEN—I hope this section will not be retained. I see no necessity for it in the present organization of the surrogates' courts throughout the State. In the remarks I made last evening I said all I think it necessary to say on this subject, and I will not repeat it now. I will only add that once we had courts of probate in this State under the Constitution of 1777. The wisdom of the framers of the Constitution of 1821 abolished that office and substituted the office of surrogate. The Constitution of 1846 retained the same provision. The practice of that court operates well, I believe, in all the counties.

Mr. EVARTS—I beg to ask the attention of the Convention for a moment to a few suggestions on this subject. There is, in framing a fixed form of government for twenty years, some difficulty felt in the manner of arrangement, which may not seem to be very important at the time, but a circumspect reference to the duty of the Convention will make it desirable for us to insist upon an absolute unchangeability no further than is clearly necessary for some serious consideration. Now, the duties of surrogate in this State originally partook of what we would call an official character in distinction from a judicial character; but by degrees it has been found convenient—and in the main, perhaps, the experiment has justified it—to make the judicial function larger and larger, until the surrogates, particularly in communities where the population and property are large, have jurisdiction of a most extensive class of important interests. Any thing that connects itself with the estate of a decedent in the way of testamentary disposition, or in respect to rights of personal representatives or of guardians, is within the surrogate's judicial function; and the probate of contested wills, as we all know, comes to be one of the most important as well as one of the most extensive subjects of judicial cognizance. In England they have, of late, broken up the official

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character of the old probate court, known there as doctors' commons, and have let in the light of day, thus securing the ordinary guaranties in protection of the public, and open administration of justice in these important subjects of probate jurisdiction. The probate court, with a judge holding the same position in reference to the general judicial establishment that the judges of other courts of record do, with pleadings and a jury trial, now discharges in England these important functions. In the city of New York and in the city of Brooklyn, and in some other large cities, it is very apparent that the amount of wealth and population must necessarily make, year by year, the number of these probate litigations greater. Our Constitution, as we propose it, does not itself make any change. But it does not forget that in the progress of twenty years, if not at the present time, it may be very desirable that the Legislature should have the power to separate the mere official duty of the surrogate, as the register of wills and in taking formal proof of uncontested wills and issuing testamentary papers and letters of guardianship from the true judicial functions now discharged by the surrogate, and which pass upon the gravest questions of law and fact that can be submitted to any tribunal of the State. If the gentleman from Richmond [Mr. E. Brooks] is right in supposing that all this faculty would rest in the Legislature without this section, I would agree with him in striking it out. But the fear is that the office of surrogate being in the Constitution provided for as a part of the establishment of the State, an attempt of the Legislature to make a court of probate that would have a judge under the usual conditions of judicial responsibility which belong to a judge of a court of record, and a jury as a part of its regular framework, might be held to be unconstitutional. We all know that the supreme court in its general term is now occupied with appeals, and at circuit in the trial of issues of fact, which, in the expensive manner now provided, come from the surrogate's court for a jury finally to determine. Safety in this branch of litigation, and economy, require that it shall be competent for the Legislature, when any portion of the State shall communicate such desire to their representatives, to open a probate court for the trial of contested cases with a jury, leaving the official duties of the surrogate in the registration of wills, and formal probates to remain as they have heretofore been.

The question was put on the motion of Mr. E. Brooks to strike out the section, and it was declared lost.

Mr. ROBERTSON—I would suggest to the Convention whether the use of the word "other" in place of the word "existing" would not be more appropriate; whether the word "existing" does not confine it to the courts existing at the time of the adoption of the Constitution? That would, of course, cut off the Legislature from creating a court in which should be vested the power of the surrogate, together with some other power which could be exercised by some other court under the present Constitution.

Mr. EVARTS—I have no objection to such amendment.

Mr. FOLGER—I have no objection to it.

The section was so amended.

Mr. E. BROOKS—Since the Convention declined to strike out the section, I move to strike out the words "abolish the office of surrogate." I do not think it wise to so re-enact scenes which have transpired in the legislative history of this State, creating a scramble, on the one part, for the abolition of the office, and on the other for its retention. We have declared in the previous provisions of this article that these officers shall remain as they now are. It is the judgment of a great majority of the gentlemen who have spoken upon this subject that the office is a wise one, and that it fulfills an important function in the judicial history of the State. I, therefore, to test the sense of the committee, move to strike out the words "abolish the office of surrogate."

The question was put on the amendment of Mr. E. Brooks, and it was declared adopted.

Mr. SPENCER—It occurred to me when the gentleman from Onondaga [Mr. Alvord] proposed to substitute the word "registrars" for "registers," that his criticism upon this word was more nice than wise. I have examined the Constitutions of several States in that particular, and also Webster's Dictionary, upon the use of the term, and I found that register is the proper term to be employed. I therefore ask that the substitution of the word registrars may be reconsidered. It will be found that the word register is employed for this purpose in the States of Delaware, Maryland, Massachusetts, and Pennsylvania, and is the term for a Constitutional officer. I believe it is also employed in the statutes of several other States for that purpose. The term "registrar," as far as I know, is not in use in this country, but is in England an office of the university.

Mr. EVARTS—In our own State the habit of the Constitution is to use the word register.

The PRESIDENT—The amendment was ordered by unanimous consent, and if there be no objection, the section will be again amended as suggested by the gentleman from Steuben [Mr. Spencer].

There being no objection, the section was restored, in respect to the word "register."

Mr. LIVINGSTON—I move to strike out the words "confer upon existing courts the powers and duties of surrogates, and the jurisdiction of surrogates." It is evidently proper that it should be stricken out, particularly after the adoption of the amendment of the gentleman from Richmond [Mr. E. Brooks].

The question was put on the amendment of Mr. Livingston, and it was declared lost.

Mr. BALLARD—I move to insert after the word "courts" in the second line, the words "of record."

The question was put on the amendment of Mr. Ballard, and it was declared carried.

Mr. BICKFORD—It seems to me that the amendment of the gentleman from Richmond [Mr. E. Brooks], important as it was, was not sufficiently considered. It appears to me a very important question whether the Legislature shall have power to abolish the office of surrogate. I therefore move that the vote by which the

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amendment was adopted be reconsidered, and I call the ayes and noes on the question.

Objection being made to the immediate consideration of the question, the motion to reconsider was laid on the table.

There being no further amendment offered to the section the SECRETARY read the first section as follows:

SEC. 1. The assembly shall have power of impeachment, by a vote of the majority of all the members elected. The court for the trial of impeachments, shall be composed of the President of the Senate, the Senators, or a major part of them, and the judges of the court of appeals, or the major part of them. On a trial of an impeachment against the Governor, the Lieutenant-Governor shall not act as a member of the court. No judicial officer shall exercise his office after he shall have been impeached, until he shall have been acquitted. Before the trial of an impeachment, the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to evidence, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this State; but the party impeached shall be liable to indictment and punishment according to law.

Mr. M. I. TOWNSEND—I move to strike out the word "judicial" in the eighth line.

The question was put upon the amendment of Mr. M. I. Townsend, and it was declared lost.

Mr. POND—I offer the following amendment.

The SECRETARY read the amendment as follows:

After the word "them" in line six insert as follows: "While engaged in said court as members thereof, Senators shall receive such compensation therefor as may be prescribed by law."

The question was put on the amendment of Mr. Pond, and it was declared lost.

Mr. HARDENBURGH—I see that a conviction can be had by less than one-third of the members composing the courts for the trial of impeachments, by the use of the word "present." One-half of the court can hold court, and two-thirds of that half can convict. It is a difficulty that has been encountered in the Senate.

Mr. FOLGER—That is the case in the present Constitution.

Mr. HARDENBURGH—The fault is in regard to the passage of a law over the veto power I propose that it shall read two-thirds of those required to hold the court. I propose to strike out the word "present," and after the word "present" add "the majority of all the members belonging to said court."

Mr. ROBERTSON—I would suggest that the gentleman can accomplish his purpose by striking out the word "present." A court is convened for the trial of an impeachment and is to be composed of certain persons, and no person shall be convicted except by two-thirds of the members of the said court.

Mr. EVARTS—It is not a court unless it contains a majority of the Senators and judges of the court of appeals. There must be a presence of enough to make a court. The provision is that it shall require two-thirds of the members present to convict.

Mr. HARDENBURGH—Then you have two-thirds of the majority.

Mr. EVARTS—Undoubtedly.

The question was put on the amendment of Mr. Hardenburgh, and it was declared lost.

There being no further amendment offered, the SECRETARY read the second section as follows:

SEC. 2. There shall be a court of appellate jurisdiction, called a court of appeals, composed of a chief judge and six associate judges, who shall be chosen by the electors of the State, and shall hold their office for the term of fourteen years, and shall not be elected for a second term. At the first election of judges under this Constitution every elector may vote for the chief and only four of the associate judges. No chief judge or associate judge of said court shall remain in office longer than until the first day of January next after he shall have reached the age of seventy years. Any five members of said court shall form a quorum, and the concurrence of four shall be necessary to a decision, until otherwise provided by law. The court shall have the appointment, with the power of removal, of the reporter and clerk of the court, and of such attendants as may be authorized by law.

Mr. MURPHY—I rise to ask the attention of the Convention to the section just passed in regard to the matter alluded to by the gentleman from Ulster [Mr. Hardenburgh]. "Two-thirds of the members present" is a rather ambiguous phrase. If there are sixty members of the court thirty-one would constitute a quorum; and by this phraseology twenty-two may convict. The article should read "two-thirds of those who constitute the court," not two-thirds of those present at the time the judgment is delivered.

Mr. EVARTS—I move to amend the second section by striking out from the fourth and fifth lines the words "for the term of fourteen years, and shall not be elected for a second term," and substitute the words "during good behavior until the age of seventy years." On that I ask the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was put on the amendment of Mr. Evarts and it was declared lost by the following vote:

Ayes—Messrs. A. F. Allen, C. L. Allen, Alvord, Andrews, Armstrong, Barto, Beadle, Beckwith, Bergen, Bowen, E. Brooks, W. C. Brown, Chesebro, Cochran, Colahan, Comstock, Cooke, Curtis, Daly, C. C. Dwight, Endress, Evarts, Farnum, Ferry, Flagler, Folger, Garvin, Gross, Hale, Hardenburgh, Hatch, Hutchins, Ketcham, Landon, Livingston, Magee, Merrill, Merritt, Monell, More, Morris, Opdyke, President, Prosser, Rathbun, Reynolds, Robertson, Rogers, Roy, Rumsey, Silvester, Sheldon, Stratton, Van Campen, Van Cott, Wakeman—56.

Noes—Messrs. N. M. Allen, Archer, Axtell, Baker, Ballard, Barker, Beals, Bell, Bickford, F. P. Brooks, E. A. Brown, Carpenter, Case, Cassidy,

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Cheritree, Eddy, Ely, Field, Francis, Fuller, Goodrich, Grant, Graves, Hadley, Hammond, Hand, Harris, Hiscock, Hitchcock, Houston, Kinney, Krum, A. Lawrence, M. H. Lawrence, Lee, Ludington, Mattice, McDonald, Merwin, Miller, Murphy, Nelson, A. J. Parker, C. E. Parker Pond, Potter, Priudle, L. W. Russell, Schumaker, Seaver, Smith, Spencer, Tappen, M. I. Townsend, S. Townsend, Wales, Williams, Young—58.

Mr. WAKEMAN—I move to strike out in the second section, in lines four and five, the words "and shall not be elected for a second term." On that I call the ayes and noes.

Mr. EVARTS—Before this question is put I move to reconsider the vote last taken.

Objection being made to the immediate consideration of the question, the motion of Mr. Evarts was laid on the table.

A sufficient number seconding the call of Mr. Wakeman for the ayes and noes, they were ordered.

The question was put on the amendment of Mr. Wakeman, and it was declared adopted by the following vote:

Ayes—Messrs. A. F. Allen, N. M. Allen, Alvord, Andrews, Archer, Armstrong, Axtell, Ballard, Barker, Barto, Beadle, Beals, Bell, Bergen, Bickford, E. Brooks, W. C. Brown, Carpenter, Cheritree, Chesebro, Cochran, Colahan, Comstock, Cooke, C. C. Dwight, Eddy, Endress, Field, Folger, Fowler, Francis, Fuller, Garvin, Goodrich, Grant, Graves, Gross, Hadley, Hammond, Hand, Hardenburgh, Harris, Hiscock, Hitchcock, Houston, Landon, Lee, Livingston, Magee, Mattice, McDonald, Monell, More, Morris, Pond, President, Prosser, Rathbun, Reynolds, Robertson, Rogers, Rumsey, Smith, Spencer, Tappen, M. I. Townsend, S. Townsend, Wakeman, Wales, Young—70.

Noes—Messrs. C. L. Allen, Baker, Beckwith, Bowen, E. P. Brooks, E. A. Brown, Case, Curtis, Daly, Ely, Evarts, Farnum, Ferry, Flagler, Hale, Hutchins, Ketcham, Kinney, Krum, A Lawrence, M. H. Lawrence, Ludington, Merrill, Merritt, Merwin, Miller, Murphy, Nelson, Opdyke, A. J. Parker, C. E. Parker, Potter, Prindle, Roy, Schumaker, Seaver, Silvester, Sheldon, Stratton, Van Campen, Van Cott, Williams—42.

Mr. BALLARD—I move to strike out the second sentence in section 2: "At the first election of judges under this Constitution, every elector may vote for the chief and only four of the associate judges." It will then leave it standing upon the first sentence of the second section, that the electors may vote for all the judges put in nomination. On that I call the ayes and noes.

A sufficient seconding the call, the ayes and noes were ordered.

The question was put on the motion of Mr. Ballard, and it was declared lost by the following vote:

Ayes—Messrs. A. F. Allen, Alvord, Archer, Axtell, Ballard, Barker, Beckwith, Bell, Bowen, W. C. Brown, Carpenter, Cochran, Cooke, Daly, Fowler, Garvin, Goodrich, Grant, Graves, Hadley, Hand, Hardenburgh, Harris, Hiscock, Hitchcock, Ketcham, Krum, Landon, M. H. Lawrence, Lee, McDonald, Merrill, Monell, Morris, Murphy, C. E. Parker, Prosser, Robertson, Rumsey, Seaver, Spencer, M. I. Townsend, Wales, Williams—44.

Noes—Messrs. C. L. Allen, N. M. Allen, Andrews, Armstrong, Baker, Barto, Beadle, Beals, Bergen, Bickford, E. Brooks, E. P. Brooks, E. A. Brown, Case, Cassidy, Cheritree, Chesebro, Comstock, Curtis, C. C. Dwight, Eddy, Ely, Endress, Evarts, Farnum, Ferry, Field, Flagler, Folger, Francis, Fuller, Gross, Hale, Hammond, Hatch, Houston, Hutchins, Kinney, A. Lawrence, Livingsion, Ludington, Magee, Mattice, Merritt, Merwin, Miller, More, Nelson, Opdyke, A. J. Parker, Pond, Potter, President, Prindle, Rathbun, Reynolds, Rogers, Roy, Silvester, Sheldon, Smith, Stratton, Tappen, S. Townsend, Van Campen, Van Cott, Wakeman, Young—68.

Mr. BARTO—I move the following amendments: To strike out the word "six" in the second line and insert "four." To strike out "five" in the tenth line and insert "three." To strike out "four" in the eleventh line and insert "two."

A division being called for,

The question was put on the adoption of the first amendment offered by Mr. Barto, and it was declared lost.

The question was then put on the adoption of the second amendment offered by Mr. Barto, and it was declared lost.

The question was then put on the adoption of the third amendment offered by Mr. Barto, and it was declared lost.

Mr. EVARTS—I move to strike out all the third sentence of the section: "No chief judge or associate judge of said court shall remain in office longer than until the first day of January next after he shall have reached the age of seventy years." This circumscribes the freedom of choice on the part of the electors. They choose for the fixed term of fourteen years; they determine whom they will choose, with his age or without his age. It embarrasses, further, the judiciary; those who aspire to the office and those who desire to continue in office. It may be a point with the electors whether they will choose a man who can serve out the full term of fourteen years, or one whom they will thus disfavor who cannot serve a full term. A judge leaving his first term at the age of fifty-seven, is placed at a disadvantage compared with one leaving at the age of fifty-six. The truth is that the termination of office by expiration of age is only a part of the system of tenure for good behavior; and whenever fixed terms are adopted freedom of choice settles the whole question.

Mr. BICKFORD—I submit that it does not limit the choice of the people at all. If they choose to elect a man, for instance, who is sixty years of age, with the understanding that he is to serve ten years, why may they not have the privilege? As it stands now they have that privilege of electing a man sixty years of age, understanding that he is to serve only ten years, and it is not at all restrictive of their liberty of choice.

Mr. MORRIS—I merely desire to say that I think, under no circumstances, ought any incumbent to occupy an office beyond the age of seventy years.

Mr. HARDENBURGH—I move to amend by striking out "seventy" and inserting "seventy-five."

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The question was put on the amendment offered by Mr. Hardenburgh, and it was declared lost.

The question recurred upon the motion of Mr. Evarts to strike out the third sentence.

Mr. M. I. TOWNSEND called for the ayes and noes.

A sufficient number not seconding the call, the ayes and noes were not ordered.

The question was then put on the motion of Mr. Evarts, and, on a division, it was declared lost by a vote of 40 to 62.

Mr. RUMSEY — I move to amend the section by striking out all down to and including the word "judges," in line seven, and inserting in lieu thereof, the following: "There shall be a court of appellate jurisdiction called the court of appeals, composed of a chief judge and six associate judges. The judges of the present court of appeals shall be judges of the court hereby created, and hold their offices until the expiration of the terms for which they were severally elected. The other judges of said court shall be chosen by the electors of the State, and all of said judges hereafter to be elected shall hold their offices for the term of fourteen years. At the first election of judges under this Constitution, every elector may vote for the chief, and only one of the associate judges." That is precisely the section as it is now, except that it retains the present judges in the court of appeals in office during the continuance of their term. It is offered as a substitute for that portion of the section. I ask the ayes and noes on the amendment.

A sufficient number seconding the call the ayes and noes were ordered.

Mr. COMSTOCK—This amendment is totally inconsistent with what has been adopted by the most deliberate votes of this Convention. By a strong vote the Convention has just declared that at the first election of judges, under this Constitution, every elector may vote for the chief and only four of the associate judges; necessarily the amendment offered by the gentleman from Steuben [Mr. Rumsey] is inconsistent with that, and obliterates it from the system. It also is entirely inconsistent with the previous part of the section, to wit, that there shall be a court of appeals composed of a chief judge and six associate judges, who shall be chosen by the electors of the State and shall hold their office for a term of fourteen years. I doubt whether the amendment is in order. Whether in order or not, it is wholly inconsistent with what this Convention has already done.

The question was then put on the amendment offered by Mr. Rumsey, and it was declared lost by the following vote:

Ayes—Messrs. C. L. Allen, N. M. Allen, Axtell, Bell, W. C. Brown, Cooke, C. C. Dwight, Endress, Ferry, Fowler, Fuller, Goodrich, Grant. Graves, Hammond, Hand, Harris, Krum, M. H. Lawrence, Ludington, McDonald, C. E. Parker, Pond, Prindle, Rumsey, Seaver, Spencer, M. I. Townsend, S. Townsend, Wales, Williams, Young—32.

Noes—Messrs. A. F. Allen, Alvord, Andrews, Archer, Armstrong, Barker, Ballard, Barto, Beals, Beckwith, Bergen, Bickford, Bowen, E. Brooks, E. P. Brooks, E. A. Brown, Carpenter, Case, Cassidy, Cheritree, Chesebro, Cochran, Colahan, Comstock, Curtis, Daly, Eddy, Ely, Evarts, Farnum, Field, Flagler, Folger, Francis, Garvin, Gross, Hadley, Hale, Hardenburgh, Hatch, Hiscock, Hitchcock, Houston, Hutchins, Ketcham, Kinney, Landon, A. Lawrence, Lee, Livingston, Magee, Mattice, Merrill, Merritt, Merwin, Miller, Monell, Morris, Murphy, Nelson, Opdyke, A. J. Parker, Potter, President, Prosser, Rathbun, Reynolds, Robertson, Rogers, Silvester, Sheldon, Smith, Stratton, Tappen, Van Campen, Van Cott, Wakeman—77.

Mr. BICKFORD—I move to strike out the word "judge" wherever it occurs, and insert "justice;" also to strike out "judges" and insert "justices."

Mr. EVARTS—That may as well be left to the Committee on Revision.

Mr. BICKFORD—It is a mere matter of tasto; I will withdraw the amendment.

Mr. COOKE — I move as an amendment to add to the second section the following: "The Legislature shall have power to provide for the election of two additional judges of the court of appeals." The Judiciary Committee recommended a commission—that is, conferring power on the Legislature to provide for a commission to clear the calendar of the court of appeals, provided this court we have organized proved inadequate to that purpose. That section was stricken out, and now there is no provision made for that purpose. It was supposed by some gentlemen who claimed that this court of appeals as recommended and as adopted by the Committee of the Whole, would be adequate to perform all the duties devolving upon the court—that such improvement would be made in the circuit as to diminish the amount of business that comes to the court of appeals. I have no doubt the committee have adopted the best plan that they could adopt in view of all the circumstances, and yet I think there is great reason to believe that there will be such an amount of business going into the court of appeals as that court cannot dispose of. At all events, it is wise for us to make provision in case that result should follow. The Convention of 1846 left the Constitution without any provision for an emergency of that kind. In the course of ten years it became evident that some provision was necessary in order to relieve the court of appeals from an overburdened calendar. An effort was made to effect a change in the Constitution for that purpose, which failed. and the consequence has been that the cases in the court of appeals are a number of years in arrear. I think it is wisdom in us to make some provision for this purpose, to prevent a recurrence of this evil, particularly, when we see that the business in the court of appeals for the year 1862 had reached the amount of five hundred causes, brought into the court for a single year, and when we see that it is increasing at a ratio that will double it every ten years. For the purpose of putting it in the power of the Legislature to provide some relief for this court, I offer this amendment. It will not be necessary to resort to it if the prediction of the gentlemen here prove true. If it turns

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out that this court is adequate to keep down the calendar, the Legislature will never be called upon to exercise this power. But I ask gentlemen, whether it is proper for us to leave the Legislature tied up, and leave the court bound hand and foot, unable to help itself for the want of just such a provision as this?

Mr. BALLARD—I am in favor of the amendment offered by the gentleman from Ulster [Mr. Cooke]. "I speak as to wise men; judge ye what I say," and what has already been said. If we leave this court of appeals as it is now provided in this article, it will be overwhelmed with business beyond the means of extrication. If we clothe the Legislature with the power to add two members to it in case the necessity arises, then there will be nine judges, and four judges with the presiding judge can continue in session. While four, with the presiding judge, are holding a court of four weeks, the remaining judges, if they see fit, can be in consultation. At the end of four weeks the remaining four resume the bench, and thus continue to hear causes and decide them. And I believe, in that way, business will be promoted, and the decision of causes dispatched, and thus save the court from being overwhelmed with business as they have been in former years. I hope that the amendment may be adopted so that the Legislature can exercise this power if the necessity arises.

Mr. COMSTOCK—I hope this amendment will not be adopted, certainly in its present form. The attempt has been made directly in this Convention, in the Committee of the Whole, more than once, to organize a court of appeals large enough to work in sections—a double-headed court." That point in the organization of the court has been discussed over and over again in the Committee of the Whole, and it seems to have been the deliberate judgment of this Convention that we should have one court operating as a unit, the judgment of the whole of the members of which should be exercised upon all the controversies in that court. If this Convention has settled any thing heretofore, it has settled that proposition. I regard this as an indirect attempt to arrive at a result which has been condemned when presented in a more open form. The avowed object of this amendment is to produce a court large enough to work in sections, and to destroy that unity in a tribunal of last resort which seems to have been desired by this Convention. This is the avowed object of this amendment, and it might just as well have been proposed as an original proposition, that the court of appeals should consist of nine members, as to adopt this amendment now, for it gives to your Legislature authority, the very next winter after the Constitution shall have been adopted, to make the court consist of nine members. And I apprehend there will be a move in that direction very soon. How soon will there be a movement to add to the members of that court? Somebody will be dissatisfied with its decisions, and will say, "I will go to the Legislature now and add a judge or two judges to that court." Some political party may desire to change its political complexion by adding two members to the court. I think this Convention should make up its mind definitely whether it wants one court or two courts; and having made up its mind, should abide by that decision.

Mr. HALE—I offer the following amendment to the amendment of the gentleman from Ulster [Mr. Cooke]: "But no such addition shall be made unless the judges of the court or a majority of them shall recommend the same; nor shall such additional judges hold their offices for a longer time than may be recommended by said judges."

Mr. COOKE—I accept the amendment.

Mr. HALE—I have offered this amendment with a view of guarding against the danger which was referred to by the gentleman from Onondaga [Mr. Comstock], in case the amendment offered by the gentleman from Ulster [Mr. Cooke] should be adopted. As now amended, the amendment, if adopted, would merely provide this: Instead of having a commission, as was recommended by the Judiciary Committee and voted by the Committee of the Whole, it would be in the power of the judges of the court of appeals to recommend to the Legislature to give them two additional judges to aid them for a limited period to get rid of any accumulation of causes which might occur. If adopted, there would be no danger of additions being made for political reasons or to influence any decision by the judges of the court of appeals.

Mr. ANDREWS—I trust this amendment in either form will not be adopted, and that we shall adopt the section which has already been passed upon three or four times in committee.

Mr. KRUM—I hope this amendment will be adopted. One great difficulty in our present judicial system is the blockade of the court of appeals. When the amendment was proposed by the gentleman in Committee of the Whole I had some doubts as to its adoption. I had doubts as to its adoption for the reason that I did not know but the court of appeals, as organized by this section, would prove adequate to the performance of the business. With the amendment proposed by the gentleman from Ulster [Mr. Cooke] and the amendment proposed by the gentleman from Essex [Mr. Hale] we leave the question to be determined by a practical operation, whether or not the court, as it is now organized, can dispose of the business. If it can there will not be two judges added to it by the Legislature. If the court in its practical operations shall determine that it cannot perform the business, then the amendment relieves the court of that difficulty by the addition of two more judges. It seems to me that is the true way. The court will try to perform the business as it is now, and if it cannot perform the business then there is relief in the amendment offered. For these reasons I hope the amendment will prevail.

Mr. FERRY—With all due respect to those who entertain a different view I am very decidedly opposed to this amendment. When the time shall arrive that our court of last resort in this State must be a double-headed court, or operate in sections, some other system must be adopted. The remedy for the blockade of the court must be found in some other method of relief. The courts from which the business is derived—from which appeals are taken to this court must be reorganized in some form or the right of appeal must be

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limited. To my mind it would be a sorry picture to see the court of last resort operate by sections —a double court. We have had experience enough with our eight courts—general terms of concurrent jurisdiction in the supreme court in this State—to cure every man of the desire for double courts who has had practice under it.

Mr. M. I. TOWNSEND—I shall feel myself constrained to vote against this amendment; and for the reason that I deem it unnecessary. There is, in the twelfth line of the section, a cure for any blockade the court may get into, and I trust there will be wisdom enough in the Legislature to use the remedy when the times comes. It is that by law the Legislature may provide a different quorum from the one indicated in the tenth and eleventh lines. And I trust the Legislature will not be so "double-headed" as to hesitate about having the business of the court done, even though they subject themselves from the outside to the accusation of double-headedness. A smaller quorum than five may be authorized by the Legislature in case the blockade does come. I have confidence in the good sense of any Legislature in this State to believe that if the exigency does come they will see that the business of the State is done under the section as it stands.

Mr. S. TOWNSEND—I merely rise to inquire of the gentleman from Onondaga [Mr. Comstock] if we, over in this corner, rightly understood him, that the court of appeals had now arrested the increase of the calendar for the last two years, and by the manner in which they have discharged their duty had resisted and overcome effectually that continued increase which the gentleman from Cortland [Mr. Ballard] says still continues. That statement would alone induce me to vote against the amendment.

Mr. COMSTOCK—I said in Committee of the Whole that I believed the business of the court of appeals had not much increased in two or three years past. I believe that is what I said.

Mr. MILLER—I offer an amendment, to be prefixed to the amendment now offered: "after the first day of January, 1880." I wish that the plan proposed by the committee may have a full and fair trial before we attempt any doubtful experiment. But perhaps to avoid all necessity of the amendment to the Constitution, if this plan should work badly, it might be well to provide for some such relief. I offer the amendment that after the first of January, 1880, the Legislature may provide for this relief.

The question was put on the adoption of the amendment of Mr. Miller, and it was declared lost.

The question recurred on the adoption of the amendment of Mr. Cooke as amended on the suggestion of Mr Hale.

Mr. BALLARD—I call for a division of the question.

Mr. HALE—I rise to a question of order. The question is not susceptible of division, the latter part being the condition of the first part.

The PRESIDENT—The gentleman is correct. The amendment is not susceptible of division. The question must be taken on the proposition as a whole.

Mr. BALLARD—Then I will move to strike out the amendment of the gentleman from Essex [Mr. Hale].

Mr. COOKE—I wish to say one word in reply to the question put by the gentleman from Queens [Mr. S. Townsend] to my friend from Onondaga [Mr. Comstock], as to whether the business of the court of appeals had increased within the last three or four years. I understood the gentleman from Onondaga [Mr. Comstock] to say that it has not. The statistics show that it has increased so as to double every ten years up to the beginning of the war, or the first two years of the war, to 1862. The cases that were brought into court in that year were five hundred. The most that the court has ever been able to dispose of in any one year, including motions and calendar causes, has been three hundred and twenty causes. Now we may look, I say, for six or eight hundred causes going upon the calendar yearly, before five years more have elapsed. The business has been, to some extent, diminished, during the war. The effect of the war began to be felt on the business of the court as early as 1863, but that business is now increasing, and it takes no prophet to foretell that the increase will be more considerable as the business revives from the depression caused by the war, and attains its former activity. Now, the gentleman from Otsego [Mr. Ferry] says it will be a great calamity if the court of last resort has to divide itself into sections. Many of the gentleman here will understand how I explained the proposition I submitted to the Committee of the Whole for carrying on this court so as to double its capacity, and will also see that the manner of dividing it into sections cannot interfere at all with its unity, or the uniformity of its decisions; for the presiding judge of the court, it is contemplated, shall be present at every session of the court, and at their consultations. Now, I would ask my friend from Otsego [Mr. Ferry] whether the calamity of having a court constructed in that way, and doing the business up promptly, is any thing to be compared to that of a delay of seven or eight years in the disposition of our cases. I claim that of all the evils, the one most to be dreaded is that of a postponement of justice, by delay in the decision of causes. I would rather have eight courts of last resort than to have eight years' delay. But then, no such consequences need result. The court will be a unit, its decisions will be uniform, even if the Legislature, upon the advice of the judges of the existing court of appeals, come to the conclusion that some such contrivance is necessary to be resorted to in order to relieve the calendar. I do not see any difficulty about it, or any harm to come out of it. But I would put back the question to these gentlemen: What are we to do in case this Convention misjudge as to the capacity of the court that we are about organizing, as the Convention of 1846 misjudged with reference to the court of appeals organized by them.

Mr. S. TOWNSEND—The gentleman [Mr. Cooke] puts the question what we are to do. We are overlooking the fact that it will be in the power of the new Legislature, after two years' favorable consideration of the project, to amend the Constitution on this point or any other point.

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We are not making a Constitution for twenty years. It can be amended as we amended it in 1854. As to the subject of the calendar, I understood the gentleman from Onondaga [Mr. Comstock] to state that the arrest of the increase was confined to the last two years. But I wish to state to the Convention that the moment the fact is known of the arrest of the great delay to the litigants in this court and their lawyers throughout the State, the moment it is known by those who go to that court merely for delay, that it will not reach their purpose, an immense class of this frivolous litigation will cease. This frivolous litigation ought never to be entertained in that court; and if it were possible by an amendment of the Constitution to provide that it should never go upon the calendar of the court of appeals at all, I would be glad to adopt a provision of that kind. Again, I would ask professional gentlemen whether or not the legislation that has taken place in Congress within the last few years—I refer to the legislation on the national banking system—whether that legislation is, as I believe it is, almost solely under the control of the judicature of the United States? Take away that important class of litigation, take away the bankrupt matters now occupying the United States courts, and it will contribute largely to reduce the calendars of these State courts.

Mr. FERRY—My objection to the system of my friend from Ulster [Mr. Cooke] is this: I think he is incorrect in supposing that his plan does not destroy the unity of the court. If I believed with him, I should think differently. It being important (and he admits its importance) that the court should be possessed of that feature, and to destroy it would be a calamity, if the business of the court should greatly accumulate, if the court should be found inadequate to keep its calendar clear and to discharge the duties of the office, then, I say, I have in my mind half a dozen remedies for the evil that I would resort to before I would adopt that of the gentleman, believing, as I do, that it makes a court of sections. He undoubtedly entertains the opinion expressed honestly, but the Convention, being equally honest, have heard his ingenious argument and they have decided against him in regard to it, being of the opinion that the system will not work as he represents it.

Mr. DALY—I think there is great force in the inquiry put by the gentleman from Ulster [Mr. Cooke]. Since the action which this Convention has taken upon the report of the committee, no provision whatever is made to meet the exigencies of the future. There was a provision in the report of the committee that, at the expiration of a certain number of years it should be in the power of the Legislature to order a commission to clear off any accumulation which might arise in the court of appeals. That provision was stricken out upon the motion of the gentleman from Albany [Mr. A. J. Parker] with very great unanimity. We have agreed upon a fixed number of judges in the court of appeals, no greater than the number provided for in the Constitution of 1846. Now, Mr. President, gentlemen of this Convention will remember that I called the attention of the Convention some days ago to some very important facts in regard to the past action of the Convention; of the great confidence which was felt in 1821 that the supreme court, as then organized, would be able to discharge the business of the State; and of the equal confidence, expressed in the Convention of 1846, that the court of appeals would be so efficient that no cause would be more than one year from the time of its commencement in the supreme court until its final decision in the court of appeals; and also of the practical results, as shown by the large accumulation of business before 1846, and the accumulation in the court of appeals. Now, I call the attention of the members of the Convention to the fact, that, the judicial force of this State is less, in proportion to its population and great interests, than that of any other State in the union whose system I have had an opportunity of examining, and I have gone over many of them. Gentlemen will find, attached to the report of the Judiciary Committee, a comparison of the judicial force of this State with a portion of one of the States of Europe, corresponding in population, with this State—a comparison of the territorial jurisdiction of the department of the imperial court at Paris, which embraces a population of less than four millions, the difference being about one half a million. The judges in the imperial court of Paris are sixty-three in number. The judges corresponding with the supreme court of our State are sixty-five in number, and the whole number of judges of that department, as against the number that we have, presents just this result: they have three hundred and ninety-one judges, and we in this State have but two hundred and ninety-five. Now, I think it is worthy of the grave consideration of this Convention, whether they are willing to leave the arbitrary number of seven in the court of appeals to discharge all the business that may arise in the future, to meet the exigency of the increase of population, the increase of wealth, and the corresponding increase of litigation, without any provision in the event of their proving insufficient. If there has been diminution in the business of the court of appeals from the commencement of the war, it has been very well answered by the remark of the gentlemen from Ulster [Mr. Cooke] that if it had not been for the war, if the prosperity of the country had gone on for five or six years more, it is impossible to tell what would have been the condition of the court of appeals. I therefore think that this matter ought not to be passed over lightly, and I think the wise course is to adopt the amendment offered by the gentlemen from Essex [Mr. Hale] which does not leave it in the power of the Legislature to increase the number of the appellate judges, unless the judges of the existing court shall deem that necessary. And I ask, as the gentleman from Ulster [Mr. Cooke] has asked, what harm is there in allowing the Legislature hereafter to add two additional judges to the court of appeals, if the judges of that court state to the Legislature that that increase is necessary for the dispatch of business?

Mr. FERRY—I would like to inquire of the gentleman from New York [Mr. Daly], for whose

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I have the highest respect, in regard to this matter. My objection to the section was that there can be more business transacted by a court of seven judges than by a court of nine judges, if they are to act together. Does the gentleman contemplate the division of the court of last resort and their acting in sections, in order to do more business in that way?

Mr. BALLARD—I withdraw my amendment. I will also add—

The PRESIDENT—Under the rule, the gentleman from Cortland [Mr. Ballard] having once spoken, and objection being made, he cannot proceed.

Mr. COOKE demanded the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question being put on the adoption of the amendment of Mr. Cooke, it was declared lost by the following vote:

Ayes—Messrs. Archer, Armstrong, Ballard, Bickford, Bowen, E. Brooks, E. P. Brooks, W. C. Brown, Case, Chesebro, Cochran, Cooke, Francis, Goodrich Grant, Hale, Hammond, Hand, Hardenburgh, Hiscock, Kinney, Krum, Landon, A. Lawrence, Lee, Ludington, Miller, Morris, C. E Parker, Pond, Prindle, Silvester, Stratton, Tappen. Wales, Young—36.

Noes—Messrs. A. F. Allen, C. L. Allen, N. M. Allen, Alvord, Andrews, Baker. Barker, Barto, Beals, Bell, Bergen, E. A. Brown, Cassidy, Cheritree, Comstock, Curtis, C. C. Dwight, Eddy. Ely, Evarts, Farnum, Ferry, Field, Flagler, Folger, Fowler, Garvin, Graves, Gross, Hadley, Harris, Hitchcock, Houston, Ketcham, M. H. Lawrence, Livingston, Magee, Mattice, Merrill, Merritt, Merwin, Monell, Murphy, Nelson, Opdyke, A. J. Parker, Potter, President, Prosser, Rathbun, Reynolds, Robertson, Rumsey, Seaver, Sheldon, Smith, Spencer, S. Townsend, Van Campen, Van Cott, Wakeman—61.

The hour of two o'clock having arrived, the Convention took a recess till seven o'clock P. M.

EVENING SESSION.

The Convention re-assembled at 7 o'clock, and resumed the consideration of the report of the Judiciary Committee as amended in and reported by the Committee of the Whole.

The SECRETARY read section 3, as follows:

SEC. 3. Upon the organization of the court of appeals under this Constitution, the causes then pending in the present court of appeals shall become vested in the court of appeals hereby created. Such of said causes as are pending on the first day of January, eighteen hundred and sixty-nine, shall be heard and determined by a commission to consist of five commissioners of appeals. But the court of appeals hereby created, for cause shown, may order any cause thus pending before the said commissioners, to be heard in such court. Such commission shall consist of the judges of the present court of appeals elected thereto, and a fifth commissioner who shall be appointed by the Governor, by and with the advice and consent of the Senate.

Mr. BICKFORD—I move to amend this section as follows: Strike out all after the word "appeals" where it first occurs in the seventh line, to and including the word "court" in the ninth line, and add at the end of the section the following, "and the concurrence of four of the said commissioners shall be necessary to decide any cause, and if four shall not concur, the same shall be certified and be decided by the court of appeals hereby created." It is provided by the section as it now stands, that any cause now pending in the court of appeals that is vested in the court of appeals, may, by order of the court, for cause shown, be heard before the court instead of before these commissioners. If that provision remains as it is, the court of appeals will be pestered with applications to have causes heard in the court, rather than before the commissioners. It is very likely that there will be a very general desire on the part of lawyers, that their causes should be decided by the new court of appeals, rather than before this commission; and to obviate such constant applications, which would take up a great deal of the time of the court, which should be occupied in hearing and deciding causes, is the object of this amendment. It specifies what causes shall be heard in the court of appeals rather than before the commissioners, namely those which have been heard once before the commissioners, and in which four of the commissioners have not concurred in rendering a judgment. That fact being certified to the court of appeals, that court will hear and determine the causes, and as I have said, I offer the amendment to save the time of the court of appeals.

Mr. COMSTOCK—I do not think that the gentleman from Jefferson [Mr. Bickford] has fully considered all the reasons for inserting the clause which he proposes to strike out. It may happen that one of these five commissioners will be a party to the cause, or interested in the cause, or disqualified to sit in the hearing of a cause, because some of his kindred are interested in it, or he may have heard it in the court below. All these would be special reasons for transferring the cause to the court of appeals, and the amendment of the gentleman would not permit such transfer to be made for any of these reasons. It would permit only such causes to be transferred, as had failed to command four concurring voices in their decision in the commission. I think, therefore, that his amendment ought not to pass. The court of appeals would be amply able to protect itself from undue applications for the transfer of causes, and I should very much prefer to give the court of appeals entire control of the matter, so that they might order any cause which they please to order into the court of appeals; but at all events, I think the amendment offered by the gentleman from Jefferson [Mr. Bickford] is quite too restricted, and ought not to pass.

Mr. BICKFORD—I will defer to the opinion of the gentleman whose experience is so much greater than mine, and whose opinion in this matter is so much more valuable, and withdraw the amendment.

Mr. BALLARD—I offer the following amendment to the third section: After the word "Senate," in the thirteenth line, insert "and the concurrence of four shall be necessary to a decision."

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Mr. A. J. PARKER—We do not want the provision suggested in that place. It will come in better after the word "appeals."

Mr. BALLARD—It is suggested by my friend [Mr. A. J. Parker] that this should be inserted after the word "appeals," in the seventh line, and I have no objection to changing the position of the amendment.

The question was put on the amendment of Mr. Ballard, and it was declared lost.

Mr. COMSTOCK—If the vote upon this amendment is not final, I should like to say a word in regard to it. I am inclined to think that it had better pass, and I think we had better reconsider the vote.

Mr. RATHBUN—Mr. President, we all voted "No" on this side of the house, because no man here heard what the proposition was, and our rule is, when we do not understand a proposition, to vote in the negative. [Laughter.]

The PRESIDENT—The Secretary will read the amendment.

The SECRETARY read the amendment as follows:

After the word "Senate," in the seventh line, insert "and the concurrence of four shall be necessary to the decision."

Mr. COMSTOCK—I now move a reconsideration of the vote by which this amendment was rejected.

The PRESIDENT—The amendment not having been understood, and, no objection being made, it will be considered a reconsideration of the vote.

Mr. COMSTOCK—I doubt whether important causes ought to be received on the calendar of the court of appeals by the judgment of less than four of these commissioners. As the court of appeals is now organized, it requires five voices to render a judgment of affirmance or reversal. Now we know that there is, upon the calendar of the court of appeals at this time, and to be disposed of by this commission, a large number of cases of great importance, and I think it is more safe and more just to suitors interested in these cases that they should not be finally determined without the concurrence of four of the members of the commission. If there be an apparent inconvenience in that, it is relieved by the consideration that, if any cause shall be of such difficulty and importance as not to secure the concurrence of four of the commissioners, it can at once be removed into the court of appeals.

Mr. BARKER—I cannot see any wisdom in this proposed amendment, and I hope it will not prevail. It is certainly unusual and extraordinary that there should be a constitutional provision requiring so near a unanimity in the members as would be required by this amendment. It requires that there should be four out of five concurring in the adjudications of the commission. It often occurs in the hearing and determining of a case in court, that one of the judges is disqualified in some way from participating in the decision, and in such a case this amendment would require the entire unanimity of the judges sitting. It seems to me that under such a provision, the court would cease to be a useful court, and I hope the amendment will not prevail, because, in my judgment, the plan would not be found to be at all beneficial in its working.

Mr. A. J. PARKER—I cannot agree with the gentleman from Chautauqua [Mr. Barker] in regard to this amendment. It seems to me to be a very desirable one. The objection that he makes is that it requires the concurrence of almost the entire number of the commissioners sitting The answer to that is, that, in the present court of appeals six judges may constitute the court, yet five judges must concur either to affirm or reverse a judgment, so that in the court of appeals the law requires almost unanimity. Another reason why this amendment should be adopted is this: It is proposed to require four to concur in a decision. That is the precise number that is required to concur in the new court of appeals that we are organizing, as the gentleman will see by the section preceding this. Suppose you do not make this provision, what would be the consequence? Your commission is to consist of five members. If you make no provision on the subject three might hold the court, and two, being the majority of those present, might decide. It would never do to leave the matter in that way. If you make a commission of appeals you must organize it in such a way as to give the people as much confidence in the judgments pronounced by that commission as in those pronounced by the court of appeals itself; and you can do that only by requiring the same number of judges to concur whether the cause be heard in the commission of appeals or in the court of appeals.

Mr. BARKER—Mr. President—

The PRESIDENT—The Chair will remind the gentleman from Chautauqua [Mr. Barker] that he has already spoken once upon this amendment.

Mr. BARKER—I do not desire to make any remarks now but simply to give notice to the Convention, that if this amendment be voted down, I will then offer a further one requiring four of the commissioners to constitute a quorum.

Mr. MURPHY—The Constitution of the present court of appeals requires that five judges shall concur in giving a decision. The reason for making that provision was obvious. The court consists of eight members and if they should stand in any case, four to four, as they might reasonably be expected to do in some cases, there would be no decision at all, and therefore it became necessary that there should be a provision of this kind. Now, what is the provision sought to be adopted here, because of its analogy to the provision in regard to the court of appeals? That analogy cannot be established. This commission consists of five commissioners. If you adopt the amendment proposed, you allow two of the judges to make a decision, because you leave it to the power of two to prevent the affirmation or reversal of a judgment. What is to become of cases where the vote stands in that way, where the majority of the court are overruled by the minority? Are such cases to be re-argued, leading to a repetition of the same state of things? You certainly are bound to follow up this amendment if you adopt it, by some provision that such cases

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shall be disposed of in some other way I do not know any better course to pursue than to allow the majority of the court always to give the decision. Where a court consists of an even number of members, there must, of course, be some provision made to avoid a tie in the opinions of the judges, but where the number is uneven, I think it is best to let the majority give the decision, and I hope that this amendment will not be adopted.

Mr. HARDENBURGH—I simply desire to add to the remarks of the gentleman from Kings [Mr. Murphy], that by adopting the report of the committee we make a discrimination that I think is somewhat unjust to the suitors having cases pending in our courts. There are now, I believe, over a thousand cases in the court of appeals, and by the time that this section will become operative there will probably be a good many more. As the law stands, and as it stood when the suitors took the initiatory steps to come into this court of last resort, they had the advantage of the present system, requiring five judges to concur in the judgment of the court—four judges, to be sure, being enough upon a second argument, but only, I think, where the judgment was adverse to the appellant in the court below, the rule being substantially that five judges are necessary to concur in a judgment. Now, it is proposed to put it in the power of these commissioners to control the decision of the court; that is, to prevent the affirmation or reversal of the judgment rendered below, for it certainly comes to that, the commission being composed of five members. That is unfair to suitors whose cases are now in that court.

Mr. BECKWITH—I desire to reply to the remark of the gentleman from Kings [Mr. Murphy]. He says that if this amendment be adopted some other provision will become necessary for the disposal of causes, in the decision of which the required number shall not concur. If the gentleman will look at the subsequent part of that section he will find that such causes can go directly into the court of appeals. Where it is found that four of the commissioners do not concur in the judgment, the case passes directly into the court of appeals by an order of that court.

Mr. HARDENBURGH—Will the gentleman from Clinton [Mr. Beckwith] show me where that clause is?

Mr. BECKWITH—It is this: "But the court of appeals hereby created, for cause shown, may order any cause thus pending before the said commissioners to be heard in such court."

The question was put on the amendment of Mr. Ballard, and it was declared lost.

Mr. BARKER—I move to add after the word "appeal," in the seventh line, the words "and four judges shall constitute a quorum."

The question was put on the amendment of Mr. Baker, and it was declared carried.

There being no other amendments to the third section, the SECRETARY read the fourth section as follows:

SEC. 4. If any vacancy shall occur in the office of said commissioners, it shall be filled by appointment by the Governor, by and with the advice and consent of the Senate; and if the Senate is not in session, by the Governor, but in such case the term of office shall expire at the end of the session of the Senate next after such appointment. The said commissioners shall appoint from their number a chief commissioner (and may in like manner fill all vacancies in such appointment; and may appoint and remove such attendants as shall be provided for by law). The reporter of the court of appeals shall be the reporter of said commissioners. And the decisions of said commissioners shall be certified to and entered and enforced as the judgments of the court of appeals. The said commission shall continue for three years, unless the causes committed to it are sooner determined. If, at the end of three years from the time of entering upon its duties, all the causes assigned to such commission shall not have been heard and determined, the residue shall be heard and determined by the court of appeals hereby created.

Mr. SPENCER—I move to amend by striking out all after line 14 and inserting in lieu thereof the following:

"And in case at any time afterward there shall be such an accumulation of business in the court of appeals, that the same cannot be disposed of speedily and promptly, and the fact of such accumulation shall be duly certified by the court to the Governor, he shall, prior to the final adjournment of the Senate, after being so certified, by and with the advice and consent of the Senate appoint a further commission of five, with power to hear and determine such cases pending in said court, as shall, by said court, be assigned for the purpose."

I offer this amendment to meet a difficulty which has been suggested, that notwithstanding the commission which has been provided for, there will be an accumulation of business hereafter for which no provision has yet been made.

The question was put on the amendment of Mr. Spencer, and it was declared lost.

Mr. FERRY—I offer the following amendment: in line 13, after the word "commission," insert "with the assent of the Legislature." The object of this amendment is to give to the Legislature some control over the action of these commissioners. I do not desire to say that these commissioners will neglect their duty, or will not labor as faithfully as the people may think they ought to, but nevertheless the thing is possible, and it is well enough to give the Legislature control of this commission, a power to shorten their term of service if it shall be necessary. If they labor faithfully, whether they are likely to finish the business in three years or not, the people will probably be content that they should continue; but if they fail to labor as faithfully as the people think they ought, let the Legislature have power to terminate their existence as a commission. That is all there is in this amendment.

The question was put on the amendment of Mr. Ferry, and it was declared lost.

Mr. HARDENBURGH—I move to strike out the parenthesis commencing in line seven and ending in line eight. I will read the clause, and I think gentlemen will see that there is no need of this parenthesis: "The said commissioners shall appoint from their number a chief commis-

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sioner (and may in like manner fill the vacancies in such appointment)—

Mr. FOLGER—I think it would hardly do to strike that out. Suppose the chief commissioner should die or resign, there must be power to appoint another to succeed him.

Mr. HARDENBURGH—That is provided for in the preceding part of the sentence. It says "the said commissioners shall appoint from their number a chief commissioner." When he dies, have you no provision for his successor.

Mr. FOLGER—We have a provision in the parenthesis which the gentleman from Ulster [Mr. Hardenburgh] proposes to strike out, and that is the only place where it is.

Mr. HARDENBURGH—Is there no provision in the article for the appointment of such a chief commissioner?

Mr. FOLGER—The provision, I say, is just in the language which the gentleman proposes to strike out. First the commissioners are authorized to appoint from their number a chief commissioner, and then if he dies or resigns, or refuses to act, this clause provides that they may fill the vacancy.

Mr. HARDENBURGH—The gentleman means that the other four commissioners can appoint his successor.

Mr. FOLGER—Yes.

Mr. HARDENBURGH — I understand. I withdraw the amendment.

There being no further amendment offered to section 4, the SECRETARY read section 5, as follows:

SEC. 5. When a vacancy shall occur in the office of chief justice or associate judge of the court of appeals, three months prior to a general election, the same shall be filled at such election; and until any vacancy can be so filled, the Governor, by the advice and consent of the Senate, if the Senate shall be in session, or if not, the Governor alone, may appoint to fill such vacancy. If any such appointment of chief justice shall be made from among the associate judges, a temporary appointment of associate judge shall be made in like manner. But in such case, the person appointed chief justice shall not be deemed to vacate his office of associate judge any longer than until the expiration of such appointment. The powers and jurisdiction of the court shall not be suspended for want of appointment, when the number of judges is sufficient to constitute a quorum. All appointments under this section shall continue until the first day of January next after the election at which the vacancy can be filled.

There being no amendment offered to the section, the SECRETARY read section six, as follows:

SEC. 6. There shall be a supreme court having general jurisdiction in law and equity, subject to such appellate jurisdiction of the court of appeals as may be prescribed by law. The Legislature, at its session next after the adoption of this Constitution, shall divide the State into four judicial departments, and each of said departments into two districts to be bounded by county lines. The city and county of New York shall form one district. There shall be thirty-four justices of the said supreme court; ten thereof in the department in which is the city and county of New York, and eight in each of the other departments. But the Legislature shall have power to provide for an additional justice in each of said departments. One-half of the justices in each department, shall reside in each district of such department, at the time of their election.

Mr. HALE—I move to amend by striking out all after the word "law" in the third line and insert,

"There shall be in the State twelve judges of said court, any three or more of whom may hold general terms. The existing division of the State into eight districts shall continue, subject to the power of the Legislature to change the same as in this article provided. There shall also be in the first judicial district four, and in each of the other districts two justices of the supreme court: and the Legislature may provide for additional justices, not exceeding one in each district."

The amendment which I offer is substantially the same as that offered in Committee of the Whole by the gentleman from Chenango [Mr. Prindle]. It is the same that I offered in Committee of the Whole, except I provide in this section that the twelve judges to be elected by the State at large shall perform the general term duty. One word in explanation of the system which is proposed by this amendment. It is not proposed to do away with the present system of holding general terms in every district of the State. It is not proposed to do away with the power of every judge or justice of the supreme court of the State to sit and hold special terms in every county in the State. It differs from the system adopted in Committee of the Whole in this and in this only: it provides that the appellate bench shall not be elected by any special locality, but shall be elected by the people of the State at large. Each district, as before, is to elect its justices—those who are to hold trial terms and preside at circuit courts, courts of oyer and terminer and special terms. Those judges who are elected by the people at large, are to do general term duty and hold general terms, as provided by the subsequent section, in each district in the State; but it is not proposed to deprive those judges elected by the people at large of the power of doing circuit duty also; it merely provides that they shall do the general term duty. If this system were adopted, it would undoubtedly be found that these judges would be more than would be necessary to do the general term business alone, and they could be required also to hold circuit courts, and in that way their time can be fully employed. As I have said, this proposition differs from the system adopted in having the appellate bench elected by the people of the State at large.

Mr. SPENCER—I offer the following substitute: Strike out all after the word "law," in the third line of the section, and insert as follows:

"The State shall be divided into eight judicial districts of which the city of New York shall be one; the others to be bounded by county lines, and to be compact and equal in population, as nearly as may be. There shall be four justices of the supreme court in each district, and as many more in the city of New York as may from time to time be authorized by law."

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The article reported in relation to the supreme court, having been conformed to the present organization of that court, it seems to me proper that this provision copied from the present Constitution should be adopted here, to make the entire section harmonious.

Mr. FOLGER—This is the same proposition which has been already offered by the gentleman from Steuben [Mr. Spencer] and voted down in Committee of the Whole; and it has been repeatedly offered since in Committee of the Whole, and repeatedly declared out of order, as having been once rejected. It seeks to substitute for the system adopted in Committee of the Whole, and the system recommended by the Judiciary Committee, the present judicial system of the supreme court. It is true that, as the article now stands, there is but very little difference between the two propositions, but that little is important. The article as it stands recognizes the division of the State into departments, which draws after it the formation of four general terms instead of eight general terms.

Mr. SPENCER—Does the article anywhere else, except in this section, recognize it a particle?

Mr. FOLGER—If it does not, except in this section, yet the recognition of it in this section conveys to the Legislature that this Convention and the people (if they adopt this Constitution) are determined to have four general terms, and four only; and that is the reason why I am so strenuous for the system of departments; and that is the difference between the plan of the gentleman from Steuben [Mr. Spencer], which he has from time to time urged upon the Convention, and the plan of the Judiciary Committee. Our plan seeks to avoid that multiplicity of diverse decisions which would arise from having many general terms, and it gives that idea explicitly to the Legislature, so that when they come to pass a judiciary act they may see that they are required to obviate that difficulty.

Mr. HARDENBURGH—I desire, when we reach the eighth section of the report of the Judiciary Committee, to offer a substitute that I think will meet the wants, or rather the variant views, of the gentlemen who have spoken upon this subject; and therefore, for the present, I shall oppose any amendments or substitutes that may be offered to this section.

Mr. SEAVER—I would like to inquire of the gentleman from Steuben [Mr. Spencer], if his proposition contemplates strict uniformity of decisions, and if it prevents justices of the supreme court from sitting in review of their own decisions?

Mr. MURPHY—It appears to me that the principle of the amendment offered by the gentleman from Steuben [Mr. Spencer] is right. We have already adopted, in the sixteenth section, an amendment which requires that the judges of the supreme court shall be elected by the electors of their respective districts. We have therefore made necessary a modification of this section, else there will be "confusion worse confounded." Perhaps the amendment of the gentleman [Mr. Spencer], in its terms, goes too far, and the objection taken to it by the gentleman from Ontario [Mr. Folger] may be correct, so far as he seeks to have the State divided into departments, and the judges to hold general terms embracing two districts; but by the sixth section, now under consideration, it is provided that there shall be thirty-four justices of the supreme court, ten thereof in the city and county of New York, and eight in each of the other departments. Now, how many are to be elected in the second judicial district?

Mr. VAN COTT—Five.

Mr. MURPHY—It does not say so.

Mr. FOLGER—I will explain to the gentleman from Kings [Mr. Murphy]. After we had passed these sections, and the proposition of the gentleman from Steuben [Mr. Spencer] had uniformly been discarded by the committee, when we came down to section 16 the committee did then adopt this plan of electing by districts. That renders necessary some amendment which shall prescribe how the judges shall be elected in the district which comprises the city of New York, and I had it in my mind to offer an amendment by and by to provide for that.

Mr. MURPHY—Then the gentleman from Ontario [Mr. Folger] and myself agree.

Mr. FOLGER—So far.

Mr. MURPHY—I will offer an amendment myself.

The PRESIDENT—No amendment is in order, there being two amendments already pending.

Mr. SPENCER—If I may be allowed to answer the question of the gentleman from Franklin [Mr. Seaver] I will state that the amendment I proposed does contemplate uniformity of decisions in the supreme court, so far as uniformity is practicable, and that it is just as attainable under the plan I propose as under the section in its present form.

Mr. ALVORD—I rise to a question of privilege. I believe we passed a resolution that no gentleman should speak more than once upon any question, and if any gentleman who has spoken once upon this question undertakes to speak again, I shall consider it my duty and privilege to rise and object.

Mr. SPENCER—I call for the ayes and noes on the amendment.

A sufficient number not seconding the call, the ayes and noes were not ordered.

The question was then put on the motion of Mr. Spencer, and it was declared lost.

The question then recurred on the amendment offered by Mr. Hale.

Mr. HALE—I call for the ayes and noes.

Mr. FOLGER—I wish to ask the gentleman from Essex [Mr. Hale] whether his plan proposes a system of circuit duty separate from general term duty.

Mr. HALE—It does to this extent—

Mr. FOLGER—The gentleman has answered me. That proposition—

Mr. HALE—No, I have not answered the gentleman. I say it does to this extent: It provides that the justices shall not sit at general term, but the general term judges be allowed to sit at circuit and perform circuit duty.

Mr. FOLGER—I suppose that that proposition has been already discussed in the committee. I

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only wish now to call the attention of the Convention to the fact that it is a proposition that has been voted down repeatedly.

A sufficient number seconding the call for the ayes and noes they were ordered.

The question was put on the amendment of Mr. Hale, and it was declared lost by the following vote:

Ayes—Messrs. Archer, Axtell, Baker, Barto, Bickford, E. Brooks, Case, Cassidy, Cheritree, Colahan, Comstock, Cooke, Ferry, Fuller, Grant, Graves, Hale, Hammond, Hand, Hardenburgh, Krum, Landon, M. H. Lawrence, Miller, Pond, Potter, Prindle, Rathbun, Schell, Silvester, Smith, S. Townsend, Tucker, Wales—34.

Noes—Messrs. A. F. Allen, N. M. Allen, Alvord, Andrews, Ballard, Barker, Beals, Beckwith, Bell, Bergen, Bowen, E. A. Brown, W. C. Brown, Chesebro, Cochran, Corbett, Curtis, Daly, Duganne, C C. Dwight, Eddy, Ely, Endress, Evarts, Farnum, Field, Flagler, Folger, Fowler, Garvin, Goodrich, Gould, Hadley, Hatch, Hiscock, Hitchcock, Houston, Hutchins, Ketcham, Kinney, A. Lawrence, Lee, Livingston, Ludington, Magee, Mattice, McDonald, Merrill, Merritt, Merwin, Monell, Morris, Murphy, A. J. Parker, C. E. Parker, President, Reynolds, Robertson, Rogers, Rumsey, L. W. Russell, Schumaker, Seaver, Sheldon, Spencer, Stratton, Tappen, Van Campen, Van Cott, Wakeman, Williams, Young—72.

Mr. FOLGER—I move to strike out, beginning with the words "one-half" and continuing down to the end of the section. By the amendment adopted in Committee of the Whole, by which the judges are to be elected by districts, this provision is rendered unnecessary.

Mr. VAN COTT—It is not rendered unnecessary because the section does not determine the question as to how many of the judges shall be elected in each district in the first department. I suggested an amendment which I intended to offer, to insert after the word "reside" in line thirteen the words "and shall be elected." The sentence will then read "one-half of the justices in each department shall reside, and shall be elected in the district of such department at the time of their election." I do not offer this amendment now, however, because it will better come in in another place.

Mr. MURPHY—We have nowhere fixed what shall be the number in each district. If we adopt the amendment proposed by the gentleman from Ontario [Mr. Folger] —

Mr. FOLGER—If the gentleman will refer to section 6, he will see that justices of the supreme court shall be elected by the electors of their respective districts; and —

Mr. MURPHY—It struck me that the amendment suggested by my colleague from Kings [Mr. Van Cott] would effect the purpose.

Mr. HARDENBURGH—Ten of the judges are given to the city of New York; I desire to ask the chairman of the Judiciary Committee if it is not the scheme of that committee that each district shall have four judges?

Mr. FOLGER—Each district is to have four judges, except the first district, which is to have more than four, and which will be provided for by an amendment to be offered by the gentleman from Kings [Mr. Van Cott] when we come to the sixteenth section.

Mr. BECKWITH—I hope this provision will not be stricken out. My reason is this: when we come to section 16 there will be offered, I have no doubt, an amendment to strike out "district" and insert "department." And then how shall we be situated? The judges will be elected by departments, and they may all be elected in one district. I trust this will not be done. It is well known that the judges, as they are now located in the different districts, afford somewhat of an opportunity for the profession to transact business, especially special term business, in some neighborhood in their vicinity In my neighborhood we have no judge within one hundred and fifty miles in one direction. If he is absent at general term or circuit, then we have to travel about one hundred and fifty miles to get to a supreme court. Members of the profession know very well that, under the old system, we were a great deal better pleased than we are now. Our accommodation was greater than it is now, because, at that time, we had supreme court commissioners who could do the chamber business. We have now, it is true, a county judge who may do that work; but county judges in the country are permitted to practice; if they have been counsel in a case they cannot act. Hence we are forced to travel one hundred and thirty to one hundred and fifty miles to obtain an order. If this motion prevails, and then a motion should be made, as I have no doubt it will be, to strike out the word "district" and insert the word "department," then we shall be in that position. The fourth judicial district is to be united to the third district, and all the judges can be elected in the third district. Then we shall have to travel a distance of one hundred and seventy miles to reach a judge, without having a supreme court official in our neighborhood.

Mr. ALVORD—Will the gentleman permit me to ask him a question? I would ask whether, if it should so happen, as the gentleman supposed, when we come to the sixteenth section, we cannot, under amendments generally, come back and put this in the right position?

Mr. BECKWITH—I would prefer to have this retained and strike that out if the other prevails. I should be perfectly willing to vote for striking out the word "district" and inserting the word "department," provided you let this stand and add to it "during their continuance in office."

Mr. HALE—Section 16, as adopted by the Committee of the Whole, provides that justices of the supreme court shall be elected by the electors of their respective districts. It is now proposed to strike out this provision, that one-half of the judges shall reside in each of the districts or departments. If that is stricken out, I would like to know how they can be elected by the electors of their respective districts? What will be the districts of the justices of the supreme court when there is no provision in this section which prevents them all being in one district or department? I think that the motive for striking this out is something more than was stated by the gentleman from Ontario [Mr. Folger].

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Mr. FOLGER—If the gentleman [Mr. Hale] thinks that, I withdraw the motion.

Mr. HALE—That is satisfactory, Mr. President.

Mr. SPENCER—I offer the following amendment:

Strike out after "district," in line eight, and insert, "There shall be four justices in each judicial district; as many more in the judicial district embracing the city and county of New York as may be authorized by law."

Mr. ROBERTSON—If in order, I will offer another amendment.

The PRESIDENT—It is in order.

Mr. ROBERTSON—The amendment is this: That the city and county of New York shall form one district, and shall be entitled to six justices of the supreme court, and then to strike out the last clause which is proposed by the gentleman from Ontario [Mr. Folger]. The gentleman from Ontario [Mr. Folger], I understand, has withdrawn his proposition to strike out the last three lines. As the increase of force in the first district was owing to the population of the city and county of New York, I propose they shall form one district, and be entitled to six justices of the supreme court. I propose to strike out the last part, which allows one-half of ten judges to be elected by the electors of their own districts.

Mr. COOKE—I have no objection to this latter clause; my objection grows out of the sentence which occurs before that.

The PRESIDENT—Is the gentleman speaking to either of the proposed amendments?

Mr. COOKE—To the amendment proposed by the gentleman from New York [Mr. Robertson]. The preceding sentence allows the Legislature to provide for an additional justice for each of said departments. Now, to provide after that, that they shall be divided equally between the two districts, one-half to be elected by each district, I think it will make it quite inconvenient to divide the ninth man between the two districts. [Laughter.] It will require an equal half of each district. Again, this sentence to which I allude will be inconvenient in any aspect of the question, because the sixteenth section requires all the justices to be elected by their respective districts.

Mr. R. A. BROWN—I have an amendment which I desire to state, and I hope the gentleman will accept it. It is in line twelve, to strike out the word "each," and insert in place of it the word "either," or "any;" and to strike out "department," and insert "district."

Mr. ROBERTSON—I will accept the amendment.

Mr. VAN COTT—I shall propose presently, if the amendment of the gentleman from New York [Mr. Robertson] is not adopted, to change the phraseology of the ninth line of the sixth section, so that it will read, in place of "ten thereof," "five thereof." The city of Brooklyn, to-day, has a population of nearly one-half of that of the city of New York, yet with it is included the counties of Rockland, Kings, Queens, Suffolk, Westchester, Orange, Putnam and Dutchess. New York has provision made for it for eighteen superior judges, besides its force of criminal judges. I think that is too large a proportion to allow the city of New York, which has still provision for an additional justice. If that amendment is adopted I shall propose to divide the ten judges between the first and second districts, by the insertion of three or four words in this section.

Mr. MURPHY—I have a very high regard for the committee which prepared this section, but I confess I cannot understand exactly what it means. So far as I can read, the insertion of the word "department" has no effect. As I understand the gentleman from Ontario [Mr. Folger] there is no further provision in the article which recognizes or provides what he seeks to have done, viz., general terms in those departments instead of general terms in the district.

Mr. VAN COTT—The eighth section provides expressly for that.

Mr. MURPHY—I was about to ask the gentleman from Ontario [Mr. Folger] what was the reason of this last provision being inserted, that one-half of the justices shall reside in each district or each department, so far as regards the city of New York. What was the motive of the committee?

Mr. FOLGER—The motive of the committee in presenting that number was, that we conceived that a great relative proportion of the law business of the State was done in those two districts; therefore we provided for an additional force of judicial power, putting five in the first district and five in the second.

Mr. MURPHY—I understand the amendment proposed by the gentleman from New York [Mr. Robertson] is in opposition to what was determined by the committee, and I am therefore bound to vote against his amendment. I think the object which we are all seeking might be accomplished by amending this section by striking out in the thirteenth line the word "reside," and inserting the words "be elected." If the amendment of the gentleman from New York [Mr. Robertson] shall prevail, I shall make this proposition.

The question was put on the amendment of Mr. Robertson, and it was declared lost.

Mr. MURPHY—I propose to amend by striking out the word "reside," in the thirteenth line, and inserting the words "be elected."

Mr. SPENCER—Might not the gentleman from Kings [Mr. Murphy] so modify his amendment as to make it any additional district, instead of that embracing the city and county of New York, so that it will read as follows: "There shall be four justices in each judicial district, and such additional justices in any judicial district as may be authorized by law."

There being no objection, the amendment was so modified.

Mr. HARDENBURGH—I now desire to repeat to the Convention what I was about to say when I was on the floor before, that I cannot understand the necessity of this distribution into departments, since the Convention have come down to the selection of judges in the judicial districts, of which there are now eight. I would like to ask from any member of the committee what earthly object there is in this system of distribution?

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Mr. RATHBUN—I am not on the Committee on the Judiciary, but I understand the object to be this—that a general term may be taken from the districts forming the department—one general term to meet in both of the districts.

Mr. HARDENBURGH—The gentleman means that a scheme is contemplated of one general term in a department.

Mr. RATHBUN—That is it. You get rid of four general terms in the State and have four left.

Mr. HARDENBURGH—You get rid of four general terms. I was about to say to the members of the Convention that when we come down to the eighth section, an opportunity will be afforded to provide for the organization and designation of justices to hold these terms, under a plan simpler, I think, and one that will accommodate all those, or most of those, who have been in antagonism. I will read, so they may vote and pass upon it, if they see fit. I propose to substitute in the eighth section, when we reach it, this proposition: that the Legislature, at its first session after the adoption of this Constitution, shall provide for the organization of three or more general terms, leaving it to the molding hand of the agents of the people, having no departmental system, and that these general terms shall be general terms of the State. I think that three will perform the duty. I have made it imperative upon the Legislature to create at least three, but still leave it open by the words "or more." They may make "three or more." I use the language of the section reported by the Judiciary Committee. "But provision shall be made by law for designating ten or more of said justices," that is the thirty-four to compose the supreme court judges of this State, "three or more of whom shall be designated to hold the general term." Those who advocate the scheme of an absolute divorce of the general term from the circuit can be satisfied by this, and those who desire, strange as it may appear, an interchange of thought and action between the circuits and the general terms, can be satisfied in this respect. It leaves the matter plastic and flexible. If the scheme works wrongly the Legislature can alter it. As the system now is, you have iron-bound it by departments and by districts. You give the seventh and fourth districts the same legal effective force that you give the third and second districts, and the city of New York. Now, I want it as a general wants his army, so that he can send his forces wherever they are necessary. I think I am right in saying that one-sixth, if not one-fifth of the legal business of this State is done in the city of New York. Yet by this iron-bound and straight-jacket system you have just as much force in a rural district as you have where it is most needed. You cannot alter it without great trouble.

Mr. BARKER—It must be confessed that the language used in this section is rather unfortunate. There are two ideas designed to be presented. One is, that the State shall be divided into eight judicial districts, and that it shall also be divided into four departments, embracing two districts in each department. I think I have prepared an amendment which will meet all our views. I propose to strike out of the eighth line, the words "thirty-four" and insert "thirty-three." This will provide for thirty-three justices of the supreme court. I then propose to strike out of the section, from and including the word "ten" in the ninth line, and insert the following: "five thereof shall reside in the district in which is the city and county of New York, and four in each of the other districts. But the Legislature shall have power to provide for an additional justice in each district;" and then the section from the eighth line will provide for both districts in the department. It will provide for giving five of these thirty-three judges to the city and county of New York, which the section provides shall be one district. Then it gives the Legislature power hereafter to give an additional judge to each of these districts. We therefore create a district or a department and give to the Legislature power to elect an additional judge in each district. That I think will satisfy the gentleman from Kings [Mr. Murphy], and it will give the Legislature power to give the city of New York six judges.

Mr. TAPPEN—In the confident expectation that the Committee on the Judiciary will be able to better this section, I offer this resolution:—

The PRESIDENT—The Chair would inform the gentleman that the resolution is not now in order.

Mr. TAPPEN—It is a resolution referring the matter to the Committee on Judiciary to revise and report upon to-morrow.

The PRESIDENT—That can only be done by unanimous consent.

Mr. TAPPEN—I withdraw it.

Mr. SPENCER—As the amendment of the gentleman from Chautauqua [Mr. Barker] differs from mine only in fixing an additional justice provided by the Constitution of the State and authorized by law, I accept it.

The question was put on the amendment of Mr. Barker, and, on a division, it was declared carried, by a vote of 47 to 45.

Mr. HALE—I move to amend by striking out the words "additional justices in each district," and insert in the place thereof "additional justices, not exceeding one in each district." It seems to me, as the section reads, it might be a question whether the Legislature could provide for an additional justice in any one district, unless it was extended to all the districts of the State.

Mr. BARKER—I cannot conceive any such possible construction. Each district would be considered by itself, and an additional justice provided.

Mr. HALE—I beg the gentleman's pardon. I do not think there is any such language in the present Constitution.

Mr. BARKER—The word "any" can be inserted.

Mr. HALE—That would do perhaps.

Mr. COMSTOCK—I should like to inquire of those who have charge of this section—for I confess I have lost the run of it—what they propose to do with the judges now in office; whether the judges to be elected under the new Constitution in the districts, as that Constitution provides, will depend on the manner in which the State is districted. It may all work very well if the

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Legislature makes the districts identical with those which now exist, otherwise it will not work at all.

Mr. McDONALD—I offer the following amendment if it be in order.

The PRESIDENT—The Chair cannot decide until he hears it.

Mr. McDONALD—The amendment is as follows: I move to amend the section by striking out all after the word "law," in line three, and insert in lieu thereof the following:

"The judicial districts of this State shall continue as now until the next enumeration. There shall be four justices in each district, except there shall be five in the first and second judicial districts. There shall be three general terms. The Legislature may provide for a fourth if required. Each general term shall consist of four judges, of whom the chief justice shall be one."

The PRESIDENT—It will be received.

Mr. McDONALD—The object of the amendment is simply to get rid of the difficulties that have been suggested. It provides that the present judicial districts shall be continued, and it allows the other clause, which we have adopted so unanimously, with regard to the continuance of the present judges. It provides for the electing of a justice in the first and second districts, and with regard to the general terms it provides that there shall be three, and that the Legislature may create a fourth.

The question was put on the amendment of Mr. McDonald, and it was declared lost.

The question recurred on the amendment of Mr. Hale.

Mr. HALE—I will withdraw that amendment.

Mr. BAKER—I offer the following amendment as a substitute for the section:

SEC. —. There shall be a supreme court, vested with general original and appellate jurisdiction, in law and equity, subject to such appellate jurisdiction of the court of appeals as may be prescribed by law. Said supreme court shall consist of a chief justice, to be elected by the electors of the State at large, who shall hold his office for the term of twelve years, and of the justices to be elected in each of the eight judicial districts hereinafter mentioned. The Legislature, as soon as practicable after the adoption of this Constitution, shall divide the State into eight judicial districts, of which the city of New York shall be one, and each of the other seven districts to be bounded by county lines, and to be composed of contiguous and compact territory, having an equal population, as near as may be. There shall be four justices of said court elected in each of said eight districts by the electors therein, and as many more in the district composed of the city of New York as may from time to time be authorized by law, but not to exceed in the whole such number in proportion to its population, as shall be in conformity with the number of such judges in the residue of the State in proportion to its population. The justices first to be so elected in such districts shall be classified so that one of the justices of each district shall go out of office at the end of every three years, and after the expiration of their terms under such classification the term of their office shall be twelve years. The chief justice of said court, and the justice in each of said districts having the shortest time to serve, shall constitute the court to hold the general terms thereof at such times and places as may be designated by law. The justices of said court, other than those required to hold the general terms thereof, shall be the justices for holding the circuit courts, special terms of the supreme court, and to preside in the courts of oyer and terminer to be held in the several counties of this State, provided said chief justice or any of the justices of said court shall attain the age of seventy-five years before the end of his term, he shall cease to hold his office longer than the first day of January next after he shall so arrive to the age of seventy-five years.

Mr. BAKER—This is the same amendment I offered in the Committee of the Whole, on which I stated that I would like to have the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was put on the amendment of Mr. Baker, and it was declared lost by the following vote:

Ayes—Messrs. Archer, Baker, Beals, Chesebro, Grant, Hale, Hammond, Hardenburgh, Ketcham, Kinney, Krum, Landon, M. H. Lawrence, Pond, Rumsey, Schell, Stratton, Tucker—18.

Noes—Messrs. A. F. Allen, N. M. Allen, Alvord, Andrews, Ballard, Axtell, Barker, Beckwith, Bergen, Bickford, Bowen, E. Brooks, E. P. Brooks, E. A. Brown, W. C. Brown, Case, Cassidy, Cheritree, Cochran, Colahan, Cooke, Corbett, Curtis, Daly, C. C. Dwight, Eddy, Ely, Evarts, Farnum, Field, Folger, Fowler, Fuller, Garvin, Gould, Graves, Hadley, Hand, Hiscock, Hitchcock, Houston, A. Lawrence, Lee, Livingston, Ludington, Magee, Mattice, McDonald, Merrill, Merritt, Merwin, Miller, Monell, Morris, Murphy, Opdyke, A. J. Parker, C. E. Parker, Potter, President, Rathbun, Reynolds, Robertson, L. W. Russell, Seaver, Silvester, Sheldon, Spencer, Tappen, S. Townsend, Van Cott, Wakeman, Williams—73.

Mr. COMSTOCK—I propose an amendment to be added at the end of the section in order to perfect what I suppose is meant.

The SECRETARY read the amendment as follows:

Amend the section by adding thereto the following:

"But if, when the State shall be so divided, the number of justices then resident in any district shall be less than the number herein specified, one or more judges for such district shall be elected to make up the required number; and if at such time the number of justices so resident in any district shall be greater than herein specified, a reduction to the number required shall take place as soon as may be by the expiration of the official term of any such justice or justices."

The question was put on the amendment of Mr. Comstock, and it was declared carried.

Mr. CHESEBRO—I desire to move a reconsideration of the vote last taken.

Objection being made to the immediate consideration of the motion to reconsider, it was laid upon the table.

Mr. RUMSEY—I offer this amendment to the sixth section.

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The SECRETARY read the amendment as follows:

Amend the section by striking out all after the word "law," in line three, and inserting in lieu thereof the words, "The Legislature shall divide the State into eight judicial districts, to be bounded by county lines. The city and county of New York shall form one district. There shall be thirty-four justices of the supreme court, six thereof in the city and county of New York, and four in each of the other districts. But the Legislature shall have power to provide for an additional justice in any of said districts."

Mr. RUMSEY—I offer the amendment for the purpose of avoiding the difficulty that has been adverted to in dividing the State into departments. This amendment divests the case of all trouble in the selection and location of justices of the supreme court. The Legislature may provide, or we may provide in the section, for making one, two, three, four or five general terms as is thought best; and it provides for the selecting of justices from the various districts, as the Legislature shall direct.

The question was put on the amendment of Mr. Rumsey, and it was declared lost.

There being no further amendment offered to the section, the SECRETARY read section 7 as follows:

SEC. 7. The Legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and equity as they have heretofore possessed.

There being no amendment offered to the section, the SECRETARY read section 8 as follows:

SEC. 8. Provision shall be made by law for designating from time to time the justices who shall hold the general terms, and also for designating from their number a chief justice of each department, who shall act as such during his continuance in office. Four justices in each department shall be designated to hold general terms, and three of them shall form a quorum, and the justices so designated may sit at general term in any district, except as the Legislature may otherwise provide. It shall be competent for any one or more of said judges to hold special terms and circuit courts, and to preside in courts of oyer and terminer in any county as the Legislature may by law direct.

Mr. HARDENBURGH—I now propose to move as a substitute for that section the section I read a few moments ago. In rising to make this motion, it is proper for me to say that I do it with a great deal of reluctance, and I would not have adverted to it had it not been that the Convention in a very great degree so marred the scheme of harmony in that report as, in my judgment, necessitates some change in the section. I do not know that the section I propose is perfect; I do not suppose it is. But I propose it because the plan is perfectly simple and flexible. As I said before, we have bound up the State, and compelled judges to sit in localities where half the time they are not needed. We have taken away from the Legislature the power of sending them where they are needed. The scheme I propose has elasticity. The Legislature can provide for as many more than three general terms as are necessary. And then they may chose, also, a member of each, who shall act as chief justice; and the only remaining provision is that any three of them may hold the court. That is simple. As I said a moment ago, it has no confusion about it. It is a court of the State. If you want a general term in one portion of the State where it is needed, you can have it. And I call the attention of the committee to the thirteenth section, which completely answers every objection that has been urged. The thirteenth section of the article of the committee says: "The times and places of holding the terms of the court of appeals and of the general and special terms of the supreme court within the several departments and districts, and the circuit courts and courts of oyer and terminer within the several counties, shall be provided for by law." Now, with this section 8, as I propose to have it incorporated into this article, you will have three, four or five general terms provided for by your Legislature—three at least; and then the law is to provide when and where they shall be held, and how often, and by whom, just as in your present system, in a more moderate degree. The justices of each judicial district may, every two years, by the judiciary act of 1846, select the judge, appoint the place and the time when each circuit in the district shall be held, and, carrying out that principle, I desire that the same thing shall be done in the State at large. Every one perceives the advantage of this in the district system, enabling the justices to appoint more circuits in one county than they do in another; and so in the State they will be enabled to appoint more general terms in one district than in another. Three general terms, I think, will do all the business of the State. But, then, I may be mistaken, and therefore I leave it again to the system plastic in the hands of the Legislature. And also, I want vested in them the power to send these general terms where they are needed, and that they shall be general terms of the State, and not of any particular locality. That gives them power. That gives them consequence, and the suitor or his lawyer will hesitate to go to the court of appeals after the judgment or the decision of such a tribunal. The trouble now is that the general term, located in a district, is a mere conduit—the lawyer only stops there until he can obtain the decision and then he goes to the court of appeals. I think a system of this kind will vastly decrease the business in the court of appeals, because the lawyers and suitors will rely upon the decisions of the general term more than they do now in the system that we have here. But I rely upon it more in consequence of its flexibility. If I am wrong in the details the Legislature can correct them, which is not the case with any other system that has been proposed here. A plan was proposed by some gentleman, the main feature of which is that the people should elect the general term judges. But there is this objection: the people cannot select which of these judges is best to do general term business so well as the Senate of the State can do it, or the Legislature can do it. Their term of office is the same; their salaries and emoluments are the same.

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Here the gavel fell, the speaker's time having expired.

Mr. HARDENBURGH—I would like to have five minutes more.

Objection was made.

The PRESIDENT stated the question to be on the substitute offered by Mr. Hardenburgh, which was read by the Secretary as follows:

SEC. 8. The Legislature at its first session after the adoption of this Constitution, shall provide for the creation and organization of three or more general terms of the supreme court; and provision shall be made by law for designating ten or more of the said justices of the said supreme court, who shall hold the same; and also for designating from such number a chief justice for each of said general terms, who shall act as such during his continuance in office. Only three or more of the said justices so designated may hold such general terms.

Mr. BARTO demanded the ayes and noes on the adoption of this amendment.

A sufficient number not seconding the call they were not ordered.

Mr. SILVESTER—I move to strike out the word "three" in the last clause and insert "four," if that amendment is in order.

Mr. HARDENBURGH—I only desire to say a word. I think that three is sufficient to hold a court, and the Legislature can increase that number if it is thought best. And in this connection, if I am in order, I desire to say a word more in support of the proposition precisely as it is. I think the stumbling block in the Committee of the Whole—and I think the members of this Convention will agree with me in this respect—was, how we should create this general term. The gentleman from Chenango [Mr. Prindle], seeking for an absolute divorce of the general term from the circuit, and other members opposing it, and other schemes being proposed for the election of the general term judges by the people, and the committee claiming that it should be selected or designated by the Legislature. Now then, the proposition I have made, if it is clearly understood by the Convention, will be found to answer all the objections made to both these schemes. The Legislature, when they meet under this Constitution, if we are fortunate enough to have it adopted by the people, designates out of the whole college of judges ten men, if there are three courts, and more if there are more; but they designate at their first session a sufficient number of men to work these general terms of the State. What follows? I speak this to those who are in favor of the absolute divorce which has been rejected by this body, and I say to those friends, that if the Legislature nominates—designates these men to hold general terms, what earthly inducement is there for them to change them to the circuits, unless it work badly. If it works badly, I still leave in the Legislature the power to return to the present system. But if it works well, any one knows they never would do it. If it seems best that they should alternate, as the gentleman from New York suggested, from the circuit to the general term, the power lies in the Legislature to provide for that also. It is the flexibility and elasticity of this system that I present here, over all others, that recommends it to me. It is more plastic. The people can change it. Nothing is stubborn about, it except the materials out of which they are to build their structure. And that is what is wanting in every other scheme. That is what is the difficulty with the scheme under which we have lived for twenty years. You cannot transfer your general term from one geographical division of the State to another where it is wanted. I am very sorry this amendment could not have been introduced earlier when it could have been printed, read, and thought of by the members. It comes up here suddenly, and men hesitate to adopt a proposition that they cannot look over and con over, in the place of a solemn report made by such distinguished and able gentlemen as have presented this report to the Convention. And that is the difficulty under which we all labor.

Mr. SILVESTER—I withdraw my amendment.

The PRESIDENT stated the question to be on the amendment of Mr. Hardenburgh.

Mr. SILVESTER—I demand the ayes and noes.

Mr. C. C. DWIGHT—I rise to a point of order. The ayes and noes were asked for and refussd.

Mr. SILVESTER—Pending that call I offered an amendment.

Mr. C. C. DWIGHT—They were called for by the gentleman from Tompkins [Mr. Barto], and thirteen was the count of the Secretary.

The PRESIDENT—The point of order is well taken.

The question was put on the amendment of Mr. Hardenburgh, and, on a division, it was declared lost, by a vote of 48 to 48.

Mr. SILVESTER—I call for the ayes and noes.

The PRESIDENT—They have been asked and refused.

Mr. SILVESTER—I move a reconsideration of the vote.

Objection being made to the immediate reconsideration of the motion, it was laid on the table under the rule.

There being no further amendment offered to the section, the SECRETARY proceeded to read section 9 as follows:

SEC. 9. No judge of the court of appeals, or of the supreme court at general term shall sit in review of a decision in which he formerly participated.

No amendment being offered to the section, the SECRETARY proceeded to read section 10 as follows:

SEC. 10. Where a vacancy shall occur in the office of justice of the supreme court three months prior to a general election, the same shall be filled at such election, and until any vacancy can be so filled, by the advice and consent of the Senate, if the Senate shall be in session, or if not in session the Governor alone may appoint to fill such vacancy. Any such appointment shall continue until the first day of January next after the election at which the vacancy can be filled.

Mr. BICKFORD—I move to strike out "three" in the second line, and insert "two." There is no difficulty at all in filling a vacancy which shall

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occur within one month before election, and certainly not if it occurs two months before. The district conventions are held in September, and if the vacancy occurs before the first of September there is no difficulty in filling it. If it occur in August, as it now stands, a judge would hold nearly a year and a half under the appointment by the Governor. If the vacancy is to be filled by an election by the people I insist that it is fair that they should have a chance of filling it whenever they are able to do it.

The question was put on the amendment of Mr. Bickford, and it was declared lost.

Mr. COMSTOCK—This section was drawn by myself, and I do not know but it needs a slight amendment in order to remove any doubt as to its interpretation. I propose, therefore, to insert after the word "election," in the third line, the words "for a full term," so that the election shall not be for the unexpired term of his predecessor, but for the constitutional term of office.

The question was put on the amendment of Mr. Comstock, and it was declared carried.

Mr. COMSTOCK—As there seems to be no objection, I will ask unanimous consent to make a similar amendment in the section in regard to filling vacancies in the court of appeals in the fifth section, third line.

The PRESIDENT—No objection being made, the amendment will be made by the Secretary.

Mr. CHESEBRO—What does the gentleman propose to do with the words that follow, "and until any vacancy can be so filled;" will he leave those?

Mr. COMSTOCK—The appointment will continue "until any vacancy can be so filled"; until the election of the following year, unless the vacancy happens within three months of an election.

Mr. FOLGER—I would ask the gentleman whether he means that it shall be for fourteen years?

Mr. COMSTOCK—Yes, sir. The full term of office, so as to preclude the idea of electing for short, unexpired terms; I mean, that in all cases an election by the people shall be for a full term.

Mr. FOLGER—The language fails to convey that idea.

Mr. COMSTOCK—The full term is fourteen years. I believe the language conveys the idea expressly.

Mr. FOLGER—The evidence that it does not is in my asking the question. I did not know whether the gentleman meant for the full residue of the unexpired term, or for the full term of fourteen years.

Mr. COMSTOCK—I simply mean, that, when a judge dies or resigns, his successor shall be elected by the people for a full term of fourteen years.

There being no further amendment offered, to the section the SECRETARY proceeded to read section 11 as follows:

SEC. 11. At the general election in the year 1873 there shall be submitted to the people, in such manner as the Legislature shall provide by law, to be determined by the electors of the State, the question: "Shall vacancies as they occur in the office of the judges and justices mentioned in sections 2, 6, 15 and 18, of article VI of the Constitution be filled by appointment?" And if the majority of all the electors voting on such question at such election shall vote that such vacancies shall be so filled, then thereafter all vacancies in the office of judge of the court of appeals, justices of the supreme court, judges of the superior court of the city of New York, and of the court of common pleas of the city and county of New York, and of the superior court of the city of Buffalo, and county judge, shall be filled by the Governor, by and with the advice and consent of the Senate: or if the Senate is not in session, by the Governor, but in such case the term of office shall expire at the end of the session of the Senate next after such appointment.

The PRESIDENT—Are there any amendments to this section?

Mr. E. A. BROWN—I move to strike out that section. In my judgment, when so important a change as that of appointing judges of the court of appeals, justices of the supreme court, and of the various courts in the city of New York and Buffalo, and county judges in every county in the State by the Governor and the Senate, instead of electing them by the people—when a question of that importance is agitated by the people, it will be one of sufficient importance to justify an amendment of the Constitution in the usual way, and not to have the question brought up under a provision of this character, contained in the Constitution itself, which may be insufficiently brought before the attention of the people, and perhaps, inadvertently, a change may be wrought which will not be in accordance with their deliberate judgment, and different from that result which would have been reached under the usual proceeding to amend the Constitution.

Mr. MURPHY—The question, I understand, is on the adoption of this section.

The PRESIDENT—The question is upon striking out the section.

Mr. E. A. BROWN—I demand the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put on the motion of Mr. E. A. Brown, to strike out the section, and it was declared lost by the following vote:

Ayes—Messrs. N. M. Allen, Axtell, Baker, Barlard, Beals, Bell, Bergen, E. Brooks, E. A. Brown, Cassidy, Cochran, Colahan, Cooke, Corbett, Field, Flagler, Fuller, Goodrich, Grant, Graves, Hadley, Hammond, Hiscock, Hitchcock, Kinney, Landon, M. H. Lawrence, Lee, Livingston, Ludington, Mattice, McDonald, Murphy, Nelson, Pond, Sckell, Schumaker, Spencer, Tappen, S. Townsend, Tucker, Wakeman, Young—43.

Noes—Messrs. A. F. Allen, Alvord, Andrews, Barker, Barto, Beckwith, Bickford, Bowen, Case, Chesebro, Comstock, Curtis, Daly, Duganne, C. C. Dwight, Eddy, Ely, Evarts, Farnum, Folger, Fowler, Garvin, Gould, Hale, Hardenburgh, Hatch, Houston, Hutchins, Ketcham, Krum, A. Lawrence, Magee, Merrill, Merritt, Merwin, Miller, Monell, Morris, Opdyke, A. J. Parker, C. E. Parker, Potter, President, Prindle, Rathbun, Reynolds, Robertson, Rumsey, Seaver, Silvester

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Sheldon, Smith, Stratton, Van Campen, Van Cott, Williams—56.

Mr. MURPHY—Amendments are in order I believe in this section?

The PRESIDENT—The Chair holds that amendments are not in order. The Chair called for amendments before putting the motion to strike out. The negative on striking out is equivalent to the affirmative on agreeing. But no objection being made the amendment will be received.

Mr. MURPHY—I move to strike out in the tenth, eleventh, twelfth and thirteenth lines, the following:

"Judges of the superior court of the city of New York, and of the court of common pleas for the city and county of New York, and of the superior court of the city of Buffalo and county judge."

I do that, sir, as a matter of principle. I object, as I have repeatedly, upon this floor, to this discrimination between different parts of the State, one against the other. We have a court in the city of Brooklyn called the "city court." It has causes as important, judges as learned, and it does as much business as any court in any city in the State. I suppose the same fact exists in regard to other cities. I think if we are to adopt any principle, it should be one to apply equally to all parts of the State. I propose to strike out these local courts that are mentioned here, inasmuch as they do not mention all the local courts, and confine it to judges of the court of appeals and judges of the supreme court. It should apply to all parts of the State equally.

Mr. ALVORD—I wish to ask the gentleman a question; whether he begins far enough back in this matter? The courts of the city of New York and the city of Brooklyn, and the city of Buffalo and courts named here are courts which the other counties of this State cannot have.

Mr. MURPHY—The gentleman is mistaken; he is pretty accurate generally, but he is mistaken. The city of Brooklyn is not named in the section.

Mr. ALVORD—I see I am wrong in regard to the city of Brooklyn.

Mr. MURPHY—I am sorry to say that I see in this article the influence of members of this Convention in that committee. I see reservations in favor of certain cities which are not extended to others. I do not wish to be invidious here and mention names, but to me it is perfectly apparent that the influence of individuals has perverted this section from what it ought to be. I seek to have a general principle adopted in this Constitution wherever it can be, and I am not willing that there should be provisions made here of a constitutional character in regard to courts in the smaller city of Buffalo which are denied the courts in the city of Brooklyn, containing nearly a half million of people.

Mr. VAN COTT—If amendments are in order I move to insert in the thirteenth line after the word "Buffalo," the words "and of the city court of Brooklyn," which will obviate this difficulty.

The PRESIDENT—The amendment will be received by unanimous consent.

Mr. EVARTS—The gentleman from Kings [Mr. Murphy] will see that it is necessary for the completion of his amendment that the numbers "fifteen" and "eighteen" should be stricken out in the fifth line; otherwise we shall have asked the people to say, by their vote on the question, whether the judges of the superior court of New York and the common pleas of that city, and the superior court of Buffalo and county judges should be appointed or elected, and they shall have voted in favor of appointment, and notwithstanding this decision, the gentleman's amendment, as he offers it, would provide that they should continue to be elected. Now, the clause as reported by the Judiciary Committee was intended to cover all the constitutional courts of record. The addition of the county judges was inserted by the Convention in Committee of the Whole. I hope that the motion of the gentleman from Kings [Mr. Murphy] will not prevail. He will see at once that he needs to strike out "fifteen" and "eighteen" if he presses his amendment.

The question was put on the adoption of the amendment of Mr. Van Cott, and it was declared carried.

The question recurred on the amendment offered by Mr. Murphy.

Mr. MURPHY—I do not wish to trespass much on the time of the Convention, but it seems to me more proper, instead of naming the city court of Brooklyn, to say "the judges of all city courts, which shall be recognized by law as having jurisdiction."

The PRESIDENT—Does the gentleman move that as a substitute for his motion to strike out?

Mr. MURPHY—I do, sir; I am desirous that the people should vote on this question with some kind of uniformity.

Mr. COOKE—I would propose this further amendment to that of the gentleman from Kings [Mr. Murphy]; that we strike out the specification of the courts altogether, and let it read "all vacancies in the office of judge and justice of all courts of record." I move to strike out after the word "judge" in line nine down to and including the word "judge" in the thirteenth line.

Mr. MURPHY—I accept the amendment.

Mr. COMSTOCK—As a substitute I move to strike out all the enumeration of courts except the court of appeals, and the justices of the supreme court. I think it desirable to take the expression of the people, for or against the elective principle, in such a manner that the result will be free from the influence of locality. Now, the judges of the superior court and court of common pleas of New York, and the superior court of Buffalo, and of the counties in the State, are all elected by localities, and you would never get a perfect expression in that way, of the views of all the people of the State upon the question of electing or appointing their judges. I therefore think that we had better consult the people only in regard to their judges, who are chosen by the votes of the whole people of the State, and then we shall get an opinion from them free from special circumstances and local influences. And if, on the whole, the verdict of the people shall be, on such a submission, in favor of the appointive principle, it can be afterward carried, by constitutional amendments, to localities.

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The PRESIDENT stated the question to be upon the substitute proposed by Mr. Comstock.

The ayes and noes were called for. There not being a sufficient number to second the call they were not ordered.

The question was then put on the adoption of the substitute proposed by Mr. Comstock, and it was declared carried.

Mr. BARKER—I move a reconsideration of the last vote.

Objection being made to its immediate reconsideration, the motion was laid upon the table under the rule.

Mr. BERGEN—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Bergen, and it was declared lost.

Mr. FOLGER—I move that this article be the special order for to-morrow on the same order of business on which it was taken up to-day—as unfinished business

The question was put on the motion of Mr. Folger, and it was declared carried.

Mr. BERGEN—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Bergen, and it was declared carried.

So the Convention adjourned.

THURSDAY, December 19, 1867.

The Convention met at ten A. M., pursuant to adjournment.

Prayer was offered by Rev. J. T. PECK, D. D.,

The Journal of yesterday was read by the SECRETARY and approved.

Mr. GOULD asked leave of absence for the remainder of the week for Mr. C. L. Allen of Washington; also for Mr. Hale of Essex.

Mr. ANDREWS asked leave of absence for Mr. Rogers of New York, until Wednesday morning of next week.

There being no objection, leave of absence was granted in each case.

Mr. OPDYKE presented the memorial of George M. Rose relative to suffrage in the city of New York.

Which was referred to the Committee of the Whole.

Mr. HAND presented the memorial of C. O. Root, clerk of Broome county, and twenty-seven prominent citizens of Binghamton, asking for a uniform system of licensure of medical practitioners and the establishment of proper pharmaceutical regulations, and asked for a select committee of three to whom the memorial should be referred.

Mr. COLAHAN presented a memorial from Dr. Burnett and twenty-five other medical men in Westchester county, asking for a uniform system of licensure of medical practitioners and the establishment of proper pharmaceutical regulations.

Also, the memorial of citizens of Gardner, Ulster county, for the same.

Also, the memorial of citizens of Pomfret, Chautauqua county, for the same.

Also, memorials of citizens of Wayne county, for the same purpose.

Mr. COLAHAN—I ask that these memorials be laid upon the table for the present.

The PRESIDENT—They will lie on the table.

The PRESIDENT presented a communication from A. G. Johnson, in relation to the report made to the Convention by a committee of the Regents of the University, which was read by the Secretary.

Mr. BALLARD—I move that the communication be printed for the use of the Convention.

The PRESIDENT—That motion will be referred to the standing Committee on Printing.

Mr. STRATTON, from the select committee to report what accommodations could be provided in the city of New York or elsewhere for the sessions of the Convention after the 1st of January next, without expense to the State, submitted the following report:

The committee appointed by a resolution of the Convention to ascertain and report what accommodations can be provided in the city of New York, or elsewhere, for the sessions of the Convention after the first of January next, without expense to the State, submit the following report:

Your committee, in the discharge of its duty, visited the city of New York, and made an examination of several rooms recommended to the committee as proper and convenient for the meetings of the Convention. The rooms thus inspected are under the supervision of regiments of the national guard, and have been fitted up by the authorities of that city for armories. One of these rooms, that of the Seventh regiment, has already been generously tendered for the use of the Convention by Colonel Clark It is situated over Tompkins market, on the east side of Third avenue, at the junction of Third and Fourth avenues with the Bowery. The main hall is 185 feet by 95 feet. It is situated on the third floor, is easy of access, and is well lighted. Other rooms on the floor below the one last mentioned were also examined by your committee, one 40x60 and another 80x60. The room of the Twenty-second regiment armory, on Fourteenth street, near Sixth avenue, is about 110x80, and central in location. That of the Thirty-seventh regiment armory is situated at the intersection of Broadway and Sixth avenue, at Thirty-fifth street. The room is about 65x40, is well lighted and arranged. These several rooms are connected with others which could be used to facilitate the business of the Convention, and would, if properly furnished, answer the wants of the Convention as a place of meeting. Your committee called upon the mayor of the city of New York, and stated to him the object of your committee's visit to that city. He expressed a desire that the Convention should adjourn to New York, but regretted that the city had not the power or authority to offer to the Convention the facility that would be required by way of furnishing the rooms necessary for the wants of the Convention, in the transaction of its business. In response to a cordial invitation from the mayor of the city of Troy, your committee yesterday visited that city, and were generously received on their arrival by the mayor and a committee of the common council of that city. The municipal authorities of

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Troy, extended, through your committee, to the Convention, an earnest and hearty invitation to hold its sessions in that city, after the present month. They proffer to us, free of expense to the State, a large and commodious hall, 84x36, with a room adjoining, 45x36, together with other rooms in the same building, which they place at the disposal of the Convention. These rooms they propose to furnish and arrange in any manner the Convention may desire for its convenience. The building in which these rooms are situated is in the heart of the city, and convenient to the principal hotels. In the building is a well selected library of seventeen thousand volumes, and a large and commodious reading room in which are the leading newspapers and periodicals of the day. Your committee made diligent inquiries in regard to the accommodations at Troy for the comfort and convenience of the members of the Convention in case of the acceptance of their offer. There are three good and commodious hotels in near proximity to the hall tendered your committee. These hotels have every accommodation for the comfort and convenience of their guests, and which are offered at prices which your committee think reasonable. In addition to these, there are other hotels and numerous first-class boarding-houses, at which members could be accommodated at rates even less than those at the three hotels named. The authorities of Troy express a strong desire to have the Convention adjourn to that place, and your committee have no doubt but that in the event of an adjournment to that place, every facility would be extended, calculated to promote the business of its sessions, as well as the personal comfort of its members. Your committee refrain from making any recommendation, and submit the foregoing for the information and consideration of the Convention.

Respectfully submitted,

NORMAN STRATTON,
T. T. FLAGLER,
TRACY BEADLE,
E. P. MORE,
Committee.

ALBANY, December 19, 1867.

Mr. STRATTON—I would say in this connection, that the other member of the committee, Mr. A. R. Lawrence, of New York, was with the committee in their examinations in New York, and also at their interview with Mayor Hoffman. I now ask the Secretary to read the communication from the Mayor of Troy.

The SECRETARY read the communication as follows:

MAYOR'S OFFICE.
TROY, N. Y., Dec. 19, 1867.

GENTLEMEN OF THE CONSTITUTIONAL CONVENTION:—I am requested by the Common Council of this city, and by numerous citizens, to say to you, that should you see fit to adjourn the sessions of the Convention to Troy, that the hall of the Young Men's Association will be arranged for your use under your directions, and that the large picture gallery and the offices of the mayor and city clerk, adjoining the same, are at your disposal for committee rooms, or such other use as your business may require; and that every effort will be made by our authorities and citizens generally, to make your sojourn here comfortable and pleasant.

Very respectfully,
JOHN T. FLAGG,
Mayor of Troy.

Mr. STRATTON—I think I ought to state one thing further, in connection with that report, for the information of the Convention. Communications were received by your committee from the proprietors of two of the principal hotels in Troy, stating their terms. At the Troy House they offer first-class rooms, with fire, at twenty-five dollars per week; and second-class rooms from eighteen to twenty dollars per week. At the Mansion House they offer first-class rooms, including fire, at two dollars and a half per day; and second-class rooms for two dollars per day.

Mr. FLAGLER—While, as one of the committee, I refrained from recommending any particular place for our sessions, yet, as a member of the Convention, I embodied the opinion which I have on that subject in the resolutions that I send to the Chair.

The SECRETARY read the resolutions as follows:

Resolved, That this Convention accept the offer of the municipal authorities of the city of Troy to provide rooms suitably fitted up and furnished for the future sessions of the Convention.

Resolved, That this Convention will adjourn on Friday, December 20th, at 12 o'clock noon, to meet on Tuesday, January 14, 1868, at 10 o'clock A. M., in the hall tendered them by the authorities of the city of Troy, for the deliberations of the Convention.

Resolved, That a committee of five be appointed to arrange with the mayor and common council of Troy for placing said rooms in such order as will adapt them to the uses of the Convention.

Mr. FLAGLER—I appreciate and share in the universal desire of the members of this Convention to finish its work at the earliest practicable moment. We must soon yield our present place of meeting to one branch of the Legislature. An adjournment until the final adjournment of the Legislature restores to us the occupation of this chamber, is open to serious objections which I will not take time to recapitulate. The choice is offered to the Convention of meeting either in Albany or Troy (after a recess for the holidays), for the completion of our labors. After a careful examination of the relative advantages and disadvantages involved in the propositions of these two cities for the accommodation of the Convention, it is my decided conviction that it is preferable to accept the kind and hearty offer of the city of Troy, for the following among other reasons, viz.:

1. While the rooms offered by these two cities are not in either case equal to those now used by the Convention, those proffered by Troy are the most spacious, are eligibly located in a central part of the city, are near the principal hotels of

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the place, are in immediate proximity to a reading room and extensive library which are placed at the service of the Convention, and will, when arranged and furnished as proposed, quite as well or better accommodate the Convention as those which the city of Albany offers to supply.

2. Troy can at all times be reached from all parts of the State by members as well as Albany.

3. The personal convenience and comfort of members will be promoted in that Troy has three large and well-kept hotels and numerous excellent boarding-houses, which will enable them to select and make satisfactory and reasonable arrangements for board and lodging, which will hardly be the case if they are compelled to compete and scramble with members of the Legislature and others for the meager but costly accommodations of Albany.

4. There are ample facilities in Troy for doing the printing required by the Convention, or it may with very little inconvenience or delay be sent to Albany for execution under the existing arrangements.

5. By holding its sessions in Troy the members of the Convention will avoid being connected with the numerous local projects which engross so large a share of the time of the Legislature, and may quietly and without any interruption prosecute their labors to a close.

6. Albany is, and long has been largely favored with public patronage incident to its being the capital of the State. Troy, to say the least, is equally deserving, but what has she ever received?

7. Troy offers this Convention a hearty welcome, and her public spirited authorities, and enterprising and large-hearted citizens will spare no pains to insure the comfort of it members, and facilitate the dispatch of its business; can the Convention afford to decline their kind and generous proposals?

My first choice then, Mr. President, is to hold the future sessions of the Convention in Troy; my next, as an alternative, to meet in this chamber after the final adjournment of the Legislature; and last and most objectionable of all, to holding our sessions in this city simultaneous with the sitting of the Legislature.

Mr. BELL—I move to amend the resolution of the gentleman from Niagara [Mr. Flagler] by substituting the resolution of the committee first chosen, who reported in favor of adjourning the future sessions of this Convention to the City Hall in Albany. I have no doubt that the authorities and citizens of Troy would do every thing in their power for the comfort and convenience of this body, should we decide to adjourn to that city; but it does seem to me, sir, that the difference between the size of the room which they offer us, and the size of the one which we can obtain in Albany, is so immaterial that it would not warrant the adjournment of this Convention to the city of Troy. If I understand the report that was read this morning it stated that the room in Troy is only ten feet longer and four wider than the common council chamber in the City Hall in Albany; and really, the extra room that that would afford is entirely immaterial, for it has been ascertained that the common council chamber of this city is sufficiently large to accommodate all the members of this body, so that the surplus room there could be only used for spectators and visitors. There are many reasons that will occur to every member of this Convention, why we should remain in Albany; and I cannot see that we gain any important advantage by this proposed change. With our records here, and our contracts for printing, and various other things, it would be a great detriment to the future progress of the business of the Convention to leave this city; and looking the matter all over, and considering it as well as the opportunity will permit, I am decidedly in favor of the resolution recommended by the committee, of which the gentleman from St. Lawrence [Mr. Merritt] is chairman.

Mr. ALVORD—Without intending to express at this time my own desire in reference to the place of our future meetings, I would like to amend the resolution under consideration by striking out "twelve o'clock noon, Friday," and inserting "Friday, after the evening session;" and by striking out "the fourteenth of January" and inserting "the seventh of January."

Mr. MORRIS—Mr. Chairman, among the rooms described by the committee which has just reported is that room of the Twenty-second national guard regiment, on Fourteenth street, near Sixth avenue, New York. Its size is 110 feet by 80 feet—

The PRESIDENT—The Chair must ask the gentleman from Putnam [Mr. Morris] to speak to the motion of the gentleman from Onondaga [Mr. Alvord].

Mr. MORRIS—Then I will reserve my remarks upon that subject until that motion is voted down. [Laughter.]

Mr. MERRITT—It seems to me that after an examination of the halls offered in New York—

The PRESIDENT—The Chair must remind the gentleman from St. Lawrence [Mr. Merritt] that he can only speak to the motion of the gentleman from Onondaga [Mr. Alvord].

Mr. MERRITT—Do I understand that the amendment of the gentleman from Onondaga [Mr. Alvord] was a complete substitute, or only a motion to amend?

The PRESIDENT—The Chair understands it not to have reference to the place of meeting.

Mr. ALVORD—My motion had reference to the original resolution, and it has reference to that resolution, whether we meet at Albany or at Troy, or elsewhere. I moved to amend the resolution by changing the adjournment to Friday after the evening session, and the time for re-assembling to Tuesday, the seventh of January.

Mr. MERRITT—Well, sir, if we shall have gone through the judiciary article by noon tomorrow, I see no objection to our adjourning at that hour, and I am in favor of the resolution offered by the gentleman from Niagara [Mr. Flagler], as to the time of re-assembling; and for these reasons: I would be very glad to meet here on the seventh day of January, but it would be generally inconvenient for members to get together at that time. It is well known that the Legislature will meet here on the seventh of January, and in the

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confusion which will arise at that time, from the coming of the Legislature and the influx of persons not directly connected with the Legislature, I feel that we should hardly make much progress with our work; but as is usual, after the reorganization of the Legislature, this crowd will leave the city; and, therefore, I think it would be better for us not to meet before the fourteenth. If we were to meet in Troy, I would be in favor of meeting on the seventh; and I hope that this question of time will not be decided until we have fixed on the place of meeting.

Mr. BARKER—I call for the previous question, and a division on the resolution.

Mr. MURPHY—Would that preclude any further amendments?

The PRESIDENT—It would.

The question was put on the motion of Mr. Baker, and it was declared lost.

Mr. MERRITT—I ask the gentleman from Onondaga [Mr. Alvord] to withdraw his amendment until after we have voted upon the proposition of the gentleman from Jefferson [Mr. Bell].

Mr. ALVORD—There is no difficulty in the gentleman's calling for a division of the question so as to decide in the first instance the question whether we will meet at Albany or Troy, irrespective of my amendment, so that there can be no possible necessity for withdrawing it.

Mr. MERRITT—If the gentleman [Mr. Alvord] will allow a vote to be taken upon the proposition of the gentleman from Jefferson [Mr. Bell] first, I have no objection.

Mr. ALVORD—I desire, sir, that this should follow the usual rule in reference to this matter. I wish to answer the gentleman from St. Lawrence [Mr. Merritt], in regard to the time of reassembling. If you meet here in Albany instead of Troy, I see a great propriety in meeting on the seventh instead of the fourteenth. We are here now for the purpose of re-framing the Constitution of the State, and we have been working very considerably for the last four or five months undertaking to cure the evils of corruption in the Legislature. Now I am afraid—I won't say that the gentleman from St. Lawrence [Mr. Merritt] will be there—but I am afraid that if we defer our meeting until the fourteenth many members of this Convention will come here just before the seventh in order to manage the election of officers in the Legislature; and if they are here in this body in the discharge of their legitimate duties they will be out of the reach of that difficulty. [Laughter.]

Mr. M. I. TOWNSEND—Without, at this moment, undertaking to say any thing as to where this Convention had better meet after the proposed adjournment, I wish to make this suggestion, that if new rooms are to be fitted up for our accommodation in New York, or in Troy, or in Albany, three weeks may be a better period for adjournment than two, because rooms cannot be fitted up for our accommodation without considerable work by the carpenter. I make that suggestion because I think that the longer period would be better whenever we adjourn, if we go to any other place than this hall.

Mr. EVARTS—An additional reason why a recess until the fourteenth rather than the seventh would be more suitable may be found in the suggestion that the labors of the Committee on Revision and the printing of the Constitution, so far as it has received the action of this Convention, can be more surely and more thoroughly completed by the fourteenth than by the seventh. In regard to the place of meeting, Mr. President, I had occasion to say, when the subject was up last week, that, as between sitting in Albany or in New York, I preferred the city of New York. If accommodations could not be had there, or the Convention should not so remove, or shall find it necessary to sit in Albany, I propose an adjournment until May. I have a great repugnance to attempting a resumption and completion of our labors at this place during the presence of the Legislature. I am afraid that every article from the first to the last would be reopened, redebated, reconsidered by the new influx of wisdom that would come from the assembling of the Legislature, and no man could tell at the end of our labors what part was done by us and what by the Legislature. Yet there are many reasons why we should not postpone the completion of our labors as late as the month of May. I hope, therefore, in the same spirit with which the invitation has been given it will be accepted.

Mr. HATCH—Is an amendment in order?

The PRESIDENT—It is not in order. There are two amendments pending.

Mr. HATCH—At the proper time, if nobody else does, I shall move an amendment to go to the city of New York. As I understand the report in relation to these different places—

The PRESIDENT—The gentleman will please confine himself to the pending question. The Chair must restrict the debate to the amendment of the gentleman from Onondaga [Mr. Alvord], which has reference simply to the time of convening the Convention.

Mr. HATCH—I thought from the remarks of the gentleman from New York [Mr. Evarts], that the whole subject was open.

The PRESIDENT—It is not so.

The question was put on the amendment of Mr. Alvord and, on a division, it was declared lost, by a vote of 31 to 69.

Mr. BELL—I only intended by my amendment to designate the place for the future meetings of the Convention, without regard to the time of adjournment.

Mr. BICKFORD—I offer the following as a substitute for the resolution offered by the gentleman from Niagara [Mr. Flagler].

Mr. FLAGLER—I rise to a question of order. I would inquire of the Chair whether a substitute is in order while a previous substitute is pending?

The PRESIDENT—It will be read for information.

The SECRETARY read the substitute as follows:

Resolved, That this Convention will, on Monday, December 23d, 1867, at nine o'clock P. M., take a recess until Thursday, January 2d, 1868, at seven o'clock P. M.; and that the Committee on Revision be instructed to make their final report at the time last named, and that on all subjects on

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which the Convention shall not then have acted, the said committee incorporate in their report the provisions of the Constitution of 1846; and that this Convention will adjourn *sine die* on Thursday, January 7th, 1868, at eleven o'clock, A. M.

The PRESIDENT—Not being germane to the subject under consideration, this substitute is out of order.

Mr. ALVORD—I propose to amend the proposition of the gentleman from Niagara [Mr. Flagler], by constituting a committee of three.

Mr. FLAGLER—I will accept the amendment.

Mr. COLAHAN—I move to amend the resolution so as to make the time of adjournment of this Convention Monday evening instead of Friday morning.

The question was put on the amendment of Mr. Colahan, and it was declared lost.

The question recurred on the amendment of Mr. Bell.

Mr. FLAGLER—I will suggest to the gentleman from Jefferson [Mr. Bell], that he may attain his object by striking out "Troy" and inserting "Albany" in the resolutions I have submitted.

Mr. BELL—I will accept the suggestion of the gentleman from Niagara.

Mr. MERRITT—I suppose the alteration will make it consistent with the report of the comittee which was presented to the Convention the other day. I wish to say, in relation to this matter, that the gentlemen appointed upon that committee had no other desire than to select such accommodations as the Convention required. The room proposed by the city of Albany would answer the purposes of the Convention. One of the committee [Mr. Morris] reserved the right of voting in favor of going to New York, in case that proposition should be submitted. Since the appointment of the other committee, another visitation has been made to the hall, and one or two other rooms have been suggested in the city, as being more capacious and otherwise better suited to accommodate the Convention, than the one which was fixed upon. The committee did not deem it necessary to visit any other hall than the one reported. As I understand their opinion, in case it was thought best to remain in Albany, the rooms recommended would answer the requirements. It would not be expected by this Convention that we can get a room fitted up for a large deliberative body unless it is made for that purpose. We may have to suffer some inconvenience, but I imagine it will be of short duration, for we are not to remain in session a great while longer. Deeming the city of Albany the most appropriate place for the meeting of the Convention, and not fearing the bad results and influences, suggested by other gentlemen, growing out of the meeting of the Legislature, I still adhere to the report made by this Committee. If, however, the Convention decide to go to Troy, which is much preferable to going to the city of New York, we can have our printing done and sent to us from Albany. I make these remarks simply that the question may be taken, not upon the conveniences which we can command, but upon the question of leaving the city of Albany, and that we shall not go away from the city with the idea that we have not proper conveniences for the sessions of the Convention.

Mr. MORRIS—Is a substitute in order?

The PRESIDENT—A substitute by way of amendment is in order.

Mr. MORRIS—I offer this resolution:

Resolved, That this Convention adjourn at nine o'clock to-morrow evening to meet at noon on the second Tuesday of January next in the city of New York at the armory of the Twenty-second regiment national guard on Fourteenth street.

The room to which I refer in that resolution has been placed at our disposal. The same expense will be incurred in lighting and warming wherever we may hold our sessions. There is a contingent fund which I think it would be proper to draw upon to furnish the members with chairs and tables, which is all that they would require in order that they may transact their business in a proper manner. In consideration of the many advantages of going to New York, and also the centrality of its location, I beg that the members will take into consideration this matter before deciding upon Albany or Troy.

Mr. HATCH—I desire to say that the gentleman from Putnam [Mr. Morris] has anticipated the motion I intended to make. I am decidedly in favor of accepting the proposition to go to New York, for the reason, too, that I believe we should get a better attendance of the Convention there than we can at any other place. I think it is a great deal better for the Convention, even if the individual members should have to pay the expense of fitting up a room, which could not cost over three or four hundred dollars, than to go to Troy or any of the other places which have been mentioned. They certainly could place themselves in as convenient a condition, so far as comfort is concerned, as the members of the British Parliament. I am in favor of going to New York

Mr. FLAGLER—if I understand the motion of the gentleman from Putnam [Mr. Morris] it is to adjourn this Convention to one of the armories in New York on Fourteenth street. I have this to say, that as a member of one of the committees, with them I enjoyed an excellent opportunity to see the outside of that building, but there were no means by which we could see the interior [laughter], I think it would be hardly safe for this Convention to adjourn to that place without knowing whether they could get into the building. [Laughter.] I may say in regard to those armories, that, while they are arranged very nicely, they are illy adapted to any such purpose as this Convention requires. Take the Seventh regiment armory—the room itself is one hundred by two hundred feet, in the third story, is immediately under the roof, without a single thing in the general arrangement that would make it pleasant or desirable for the sessions of this Convention. The same is true, measurably, I suppose, in regard to the armory the gentleman suggests; but, as I said before, we did not have the pleasure of seeing the inside of the building.

Mr. AXTELL—I move the previous question.

The question was put on the motion of Mr. Axtell, and it was declared carried.

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The question was then put on the amendment of Mr. Morris, and it was declared lost.

The question recurred on the amendment of Mr. Bell to insert the word "Albany" and strike out the word "Troy" wherever the word occurred in the resolutions of Mr. Flagler.

Mr. MERRITT—On the question before the Convention, I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. BICKFORD—I move to lay this subject on the table.

The PRESIDENT—The motion is out of order.

Mr. FOLGER—Can there be a division, and can a vote be taken upon the second proposition first?

The PRESIDENT—If there be no objection, the course will be pursued as suggested by the gentleman from Ontario [Mr. Folger].

Mr. E. BROOKS—I submit that the previous question having been ordered, it is too late.

The PRESIDENT—The Chair does not understand that the rule precludes a division of the question, even after the main question is ordered. But it must take the questions in their order, if there be no objection.

Mr. FOLGER—I ask that the second resolution be put first, so as to vote on coming to Albany without designating any particular place.

The PRESIDENT—That order will be observed if there be no objection.

There being no objection the question was put on the branch of the resolution calling for the meeting of the Convention in Albany, and it was declared lost by the following vote:

Ayes—Messrs. A. F. Allen, N. M. Allen, Andrews, Ballard, Barker, Beadle, Bell, Bergen, Bickford, E. P. Brooks, Case, Cassidy, Chesebro, Colahan, Curtis, Daly, C. C. Dwight, Eddy, Ferry, Folger, Fowler, Garvin, Graves, Gross, Hammond, Hardenburgh, Harris, Hatch, Houston, Kinney, Lapham, M. H. Lawrence, Livingston, Mattice, Merrill, Merritt, Merwin, Monell, Murphy, Nelson, A. J. Parker, Potter, Rathbun, Robertson, Rogers, Roy, Schell, Schumaker, Seaver, Smith, Spencer, Van Campen, Verplanck, Wales—54.

Noes—Messrs. Alvord, Archer, Armstrong, Axtell, Baker, Barto, Beals, Beckwith, Bowen, K. Brooks, E. A. Brown, W. C. Brown, Cheritree, Comstock, Cooke, Corbett, Ely, Endress, Evarts, Farnum, Field, Flagler, Francis, Fuller, Goodrich, Gould, Grant, Hadley, Hand, Hiscock, Hitchcock, Hutchins, Ketcham, Krum, Landon, A. Lawrence, Lee, Ludington, Magee, McDonald, Miller, More, Morris, Opdyke, C. E. Parker, Pond, President, Prindle, Prosser, Reynolds, Rumsey, L. W. Russell, Silvester, Sheldon, Stratton, Tappen, M. I. Townsend, S. Townsend, Tucker, Van Cott, Wakeman, Williams, Young—63.

The question recurred on the resolutions offered by Mr. Flagler.

Mr. A. J. PARKER—On the question before the Convention I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. BELL—I move a division of the question, so that the vote shall be direct in regard to meeting at Troy.

The PRESIDENT—That is the question.

Mr. BELL—I would inquire of the Chair if it involves any of the other propositions as to adjournment?

The PRESIDENT—The question involves the entire series of resolutions.

Mr. BELL—Then I move to divide the question so the vote will be direct in regard to re-assembling at Troy, and without regard to adjournment or assembling.

The question was put on the resolution, accepting the offer of the municipal authorities of Troy to provide rooms for the meetings of the Convention, and it was declared adopted by the following vote:

Ayes—Messrs. Alvord, Andrews, Archer, Armstrong, Axtell, Ballard, Barker, Barto, Beals, Beckwith, Bowen, E. Brooks, E. P. Brooks, E. A. Brown, W. C. Brown, Case, Cheritree, Comstock, Cooke, Corbett, Curtis, Daly, Duganne, C. C. Dwight, Ely, Endress, Evarts, Farnum, Ferry, Field, Flagler, Fowler, Francis, Fuller, Goodrich, Gould, Grant, Graves, Gross, Hadley, Hand, Hitchcock, Hutchins, Ketcham, Kinney, Krum, Landon, Lapham, A. Lawrence, Lee, Ludington, Magee, Mattice, McDonald, Merwin, Miller, More, Morris, Opdyke, C. E. Parker, Pond, President, Prindle, Prosser, Reynolds, Roy, Rumsey, L. W. Russell, Schumaker, Silvester, Sheldon, Smith, Stratton, Tilden, M. I. Townsend, S. Townsend, Tucker, Van Campen, Van Cott, Verplanck, Wakeman, Wales, Williams, Young—84.

Noes—Messrs. A. F. Allen, N. M. Allen, Beadle, Bell, Bergen, Bickford, Cassidy, Chesebro, Colahan, Eddy, Folger, Garvin, Hammond, Hardenburgh, Harris, Hatch, Houston, M. H. Lawrence, Livingston, Merrill, Merritt, Monell, Murphy, Nelson, A. J. Parker, Potter, Rathbun, Robertson, Schell, Seaver, Spencer—31.

The PRESIDENT—If there be no division called for, the vote will be taken upon the remaining resolutions, which the Secretary will read.

The SECRETARY read the resolutions as follows:

Resolved, That this Convention will adjourn on Friday, December 20th, at twelve o'clock M., to meet Tuesday, January 14th, 1868, at ten o'clock A. M., in the hall tendered by the authorities of the city of Troy for the deliberations of the Convention.

Resolved, That a committee of three, together with the Secretary of this Convention, be appointed to arrange with the mayor and common council of Troy for placing said rooms in such order as will adapt them to the uses of the Convention.

Mr. KINNEY—Are we under the operation of the previous question?

The PRESIDENT—We are.

Mr. BARKER—I presume the Convention will consent to a *viva voce* vote?

Objection was made.

Mr. BELL—I would like to inquire what room this is.

Mr. COMSTOCK—It is the Young Men's Association room.

The question was put on the two remaining propositions.

The SECRETARY proceeded with the call of

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the ayes and noes, and the resolutions were declared adopted by the following vote:

Ayes—Messrs. A. F. Allen, N. M. Allen, Alvord, Andrews, Archer, Armstrong, Axtell, Ballard, Barker, Barto, Beadle, Beals, Beckwith, Bell, Bowen, E. Brooks, E. P. Brooks, E. A. Brown, W. C. Brown, Case, Cheritree, Cochran, Comstock, Cooke, Corbett, Curtis, Daly, Duganne, C. C. Dwight, Eddy, Ely, Endress, Evarts, Fanum, Ferry, Flagler, Fowler, Francis, Fuller, Grant, Graves, Gross, Hadley, Hammond, Hand, Hardenburgh, Hatch, Hiscock, Hitchcock, Houston, Hutchins, Ketcham, Kinney, Krum, Landon, A. Lawrence, Lee, Ludington, McDonald, Merritt, Merwin, Miller, More, Opdyke, C. E. Parker, Pond, Potter, President, Prosser, Reynolds, Roy, Rumsey, L. W. Russell, Schumaker, Silvester, Sheldon, Smith, Spencer, Tappen, M. I. Townsend, S. Townsend, Van Campen, Van Cott, Wakeman, Wales, Williams, Young—89.

Noes—Messrs. Bergen, Bickford, Chesebro, Colahan, Folger, Garvin, Harris, M. H. Lawrence, Livingston, Ludington, Merrill, Monell, Murphy, Rathbun, Schell, Seaver, Stratton, Verplanck—17.

Mr. MERRITT—I move to reconsider this last vote for the purpose of meeting on the 7th in Troy, instead of the day fixed in the resolution. I am informed that a necessity for time will not exist so far as Troy is concerned.

Mr. E. BROOKS—I move, with the consent of the Convention, that the question may be taken now so as to settle it at once.

Objection being made to its immediate consideration, the motion of Mr. E. Brooks was laid on the table.

Mr. FLAGLER—I desire to ask the consent of the Convention, to make a verbal change in the first resolution, to which there will be no objection. It is to insert before the word "invitation" the words "courteous and cordial."

The being no objection the resolution was so amended.

Mr. MURPHY—I move a reconsideration of the resolution fixing Troy as the place of meeting.

The PRESIDENT—That motion has already been received and entered for consideration.

Mr. MURPHY—The motion referred simply to the time of meeting.

Objection being made, the motion of Mr. Murphy was laid on the table.

The PRESIDENT announced the following committee under the resolutions of Mr. Flagler, just adopted: Messrs. Flagler, Francis, S. Townsend, and the Secretary of the Convention.

Mr. FLAGLER—My residence being a distant part of the State, it will interfere with the attention to which the duties of the committee are entitled. The committee should be local. I respectfully ask to be excused from serving.

No objection being made, Mr. Flagler was excused.

The PRESIDENT appointed Mr. Hitchcock in the place of Mr. Flagler.

Mr. BICKFORD—I move to reconsider all the votes by which the resolution has been adopted.

Objection being made, the motion was laid on the table.

Mr. EDDY—I offer the following resolution:

Resolved, That the thanks of this Convention are tendered to the mayor and city authorities of the city of Albany for their very liberal proposition in their invitation to the Convention to finish up its labors in this city.

Mr. MORRIS—I move to amend the resolution by including the city of Troy.

A DELEGATE—That has already been done.

The question was put on the motion of Mr. Morris, and it was declared lost.

The question was put on the resolution of Mr. Eddy, and it was declared adopted.

Mr. VAN CAMPEN—I offer this resolution.

The SECRETARY read the resolution as follows:

Resolved, That the Committee on Revision be instructed to amend section 1 of the article on corporations, other than municipal, by striking out the words "No consolidation of railroad corporations shall be authorized by the Legislature where the aggregate capital shall exceed twenty millions of dollars," and insert "The Legislature shall not authorize the consolidation of the New York and Erie railroad company with the Hudson River, Harlem and New York Central railroad companies, or with either of them, nor of railroad corporations owning parallel or competing lines" And that said section, so amended, shall be reported by the committee when the said committee shall make their report to the Convention.

Mr. ALVORD—I should like to know whether that is by way of instruction to the Committee on Revision.

The PRESIDENT—It is.

Mr. ALVORD—Then I hope it will lie over under the rule.

The PRESIDENT—There being objection made, the resolution must lie on the table.

Mr. GRAVES—I offer this resolution.

The SECRETARY read the resolution as follows:

Resolved, That, in the opinion of this Convention, it is the duty of the Legislature at its next session to provide a permanent place to be called "The Soldiers' Home," for disabled soldiers and sailors of the State of New York.

Mr. GRAVES—I offer this resolution because I learn that the place where the soldiers and sailors' home is now located belongs to the city of Albany.

Mr. FOLGER—I rise to a point of order. This resolution is not debatable. The gentleman is speaking to it, and I suppose it must lie over.

The PRESIDENT—It is not debatable. If gentlemen desire to debate it, it must lie over.

Mr. ARCHER—To meet a question which seems to be a public one, I offer the following resolution:

The SECRETARY read the resolution, as follows:

Resolved, That the Secretary be directed to prepare the several articles adopted by the Convention, and referred to the Committee on Revision, as a separate document, and that the same be printed.

Mr. ARCHER—This document, when prepared and sent out, will show the public that this Convention has not been remiss in the discharge of

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its duty; that many valuable improvements have been made in the present Constitution.

Mr. FOLGER—I rise to a point of order.

The PRESIDENT—The gentleman is debating the resolution. It must lie over under the rule.

The resolution was referred, under the rule, to the Standing Committee on Printing.

Mr. SEAVER—I ask leave to say that the Committee on Printing have had that resolution under consideration and they are prepared to recommend its adoption.

Mr. E. BROOKS—The Committee on Revision have in course of preparation for printing all articles as fast as they are acted upon.

Mr. FOLGER — I rise to a point of order. There is no question before the Convention.

The PRESIDENT—The point of order is well taken.

Mr. BECKWITH—I offer the following resolution:

The SECRETARY read the resolution, as follows:

Resolved, That the Committee on Revision be authorized to meet during the adjournment of this Convention.

The question was put on the resolution of Mr. Beckwith, and it was declared adopted.

The hour of twelve o'clock having arrived, the Convention again proceeded to the consideration of the special order, being the report of the Committee on the Judiciary, as amended and reported from the Committee of the Whole.

The SECRETARY read the twelfth section as follows:

SEC. 12. The judges of the court of appeals and the justices of the supreme court shall not hold any other office or public trust. All votes for either of them for any elective office, (except that of justice of the supreme court or judge of the court of appeals), given by the Legislature or the people shall be void. They shall not exercise any power of appointment to public office, except as is herein specifically provided.

Mr. GRAVES—Do I understand that all further amendments are precluded to section 11?

The PRESIDENT—That section was passed last evening.

Mr. GRAVES—I desire to offer an amendment.

The PRESIDENT—The Chair invited amendments to the eleventh section, which were not made: the motion was then made to strike out the section, which was negatived. Therefore, no amendments are now admissible.

Mr. SILVESTER—Is it in order now to move a reconsideration of the vote taken last evening upon the amendment of the gentleman from Ulster [Mr. Hardenburgh]?

The PRESIDENT—It is in order; that motion will be entertained under the head of amendments generally.

There being no amendments offered to the twelfth section the SECRETARY read section 13 as follows:

SEC. 13. The times and places of holding the terms of the court of appeals and of the general and special terms of the supreme court within the several departments and districts, and the circuit courts and courts of oyer and terminer within the several counties, shall be provided for by law. But provision shall be made for holding general terms of the supreme court in each of said districts.

There being no amendments offered to the thirteenth section, the SECRETARY proceeded to read section 14, as follows:

SEC. 14. Judges of the court of appeals and justices of the supreme court may be removed by concurrent resolution of both houses of the Legislature, if two-thirds of all the members elected to the Assembly and a majority of all the members elected to the Senate concur therein. All judicial officers, except those mentioned in this section, and except justices of the peace and judges and justices of inferior courts, not of record, may be removed by the Senate on the recommendation of the Governor. But no removal shall be made by virtue of this section unless the cause thereof be entered on the journals, nor unless the party complained of shall have been served with a copy of the complaint against him, and shall have had an opportunity of being heard in his defense. On the question of removal the ayes and noes shall be entered on the journal.

No amendments being offered to the fourteenth section, the SECRETARY proceeded to read section 15, as follows:

SEC. 15. There shall be in the city and county of New York, the superior court of the city of New York and the court of common pleas of said city and county. And there shall be in the city of Buffalo the superior court of said city. The said courts shall severally have the jurisdiction they now severally possess, and such other original and appellate civil and criminal jurisdiction as may be conferred by law. There shall be six judges of the superior court of the city and county of New York; six judges of the court of common pleas of the said city and county of New York, and three judges of the superior court of the city of Buffalo. The judges of said courts, respectively, shall designate one of their number as chief justice, who shall act as such as long as he continues in office. Vacancies in said courts shall be filled by election by the electors of said cities respectively at the general election next after the vacancy shall occur. And until such general election in the same manner as vacancies in the office of justice of the supreme court, as is hereinbefore provided. It shall be competent for the Legislature to provide by law for the detailing of one or more judges of the superior court or of the court of common pleas of the city of New York to hold circuits or special terms of the supreme court in the city and county of New York from time to time, as the exigencies of judicial business in that city and county may require. The judges of the courts mentioned in this section shall be paid, and the expenses of said courts defrayed in the manner provided by law.

Mr. MURPHY—This section constitutionalizes certain local courts. I think that uniformity should prevail in all parts of the State; and I therefore propose the following amendment to this section, which I think meets the approbation of the Committee on the Judiciary:

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After the words "city and county," in the third line, insert the following: "There shall be in the city of Brooklyn the city court of Brooklyn, with such further jurisdiction as may be determined by law." And after the words "New York," in the tenth line, insert the following: "One or more judges of the city court of Brooklyn, not exceeding three, as may from time to time be fixed by law."

The question was put on the amendment offered by Mr. Murphy, and it was declared carried.

Mr. BARKER—I desire to call the attention of some of the Judiciary Committee, who live in the city of New York, to the question whether this section provides for the additional judges required for the court of common pleas—the three new judges that would go into this court. This question I submit to members of the committee from that city.

Mr. GARVIN—The present number of judges in the court of common pleas consists of three; and this section provides for six.

Mr. MILLER—I offer the following amendment: Insert in line twenty-five, after the word "defrayed," as follows: "by the localities wherein said courts are respectively located." These courts that are mentioned in this section are purely local. They exist now under legislative enactment. and the salaries of the judges and the expenses of the court are borne by the locality in which the court is established. Now, I am of the opinion that, if we allow this section to remain without such an amendment, we shall say, by implication, at least, that the expenses of these courts are to be borne and paid by the State. I notice in the article, wherever we have intended that the expenses of local courts shall be paid by the locality, we have provided that the salaries shall be fixed by the local authorities and, whenever we have intended that the expenses should be borne by the State, we have provided that the salaries shall be fixed by law—precisely the same language that is used in this section. I offer this amendment so that it may appear that, while we make these courts constitutional courts, we yet regard them as local courts, and intend that the expenses shall be borne by the locality in which they are established, and not by the State.

Mr. BERGEN—In my judgment, sir, the salaries of these judges in these courts should be a State charge, and justly, too. The State furnishes supreme court judges, who, in nine-tenths of the counties in this State, in fact nearly the whole, perform these duties—all the necessary duties of these courts in those counties—at the expense of the State. I have no doubt that in the county which the gentleman [Mr. Miller] represents, the judge of the supreme court, who is paid by the State, performs all the duties which properly belong to a supreme court, or to a court of high jurisdiction, for that county. Now, in the city and county of New York, in the county of Kings, and other localities of the State, the supreme court judges cannot, on account of the increase of population and business, perform all those duties for those counties; and the gentleman now proposes that we shall have additional judges at our own expense, to perform those duties which the State pays for performing in his county.

Mr. MILLER—In this article we provide additional supreme court judges for that district, to do this additional work.

Mr. BERGEN—The question is whether one additional supreme court judge in the city and county of New York can perform all the duties which the supreme court has to perform. They can only add one, that is all. There is great injustice in the system that is provided, I mean under the Constitution of 1846, and if the Convention is just—if we deal out justice equally to all parts of the State—we will provide that the State shall pay the salaries of these judges in the localities referred to, for performing the same kind of duties which the State pays for performing in other localities. If the gentleman desires justice done he will not object to the State paying these salaries.

Mr. MILLER—When this question was under consideration, it was claimed by the representatives from that locality that they were local courts and to be paid for by the localities.

Mr. BERGEN—They are local courts, I grant, but they perform the duties which the supreme court cannot perform in consequence of an insufficient number of judges. You have compelled, or are trying to compel those localities to pay out of their own pockets for performing duties which the supreme court performs, at the expense of the State, elsewhere. The gentleman's locality pays for performing the duties which the inferior court performs. We do the same, and do not object to paying for inferior courts. When you ask us, and compel us, in fact, to find additional judges, at our own expense, to perform the duties of the supreme court, giving them the powers of the supreme court, in their locality and other localities, you ask what is unjust and unfair and which no fair man ought to require from us. The rule should operate equally. If the State pays for performing that service in the gentleman's county and in nine-tenths of the counties of this State, they should pay for it in the county of Kings and the county of New York. That is what I ask; and I hope the gentleman's proposition will be voted down, and that we may have justice done by this Convention. Injustice was done by the Convention of 1846, and I hope this body is more generous, more willing to do what is right, and make a Constitution that will operate equally upon all portions of the State.

Mr. GRAVES—I am a little surprised at the view of this matter by my friend from Kings [Mr. Bergen]. When this question was up the other day, and when the construction of this language was discussed in this Convention, gentlemen from New York, or some of them at least, avowed upon this floor that it had been the custom in the city of New York to pay their own officers and that they had a law regulating the payment of salaries there and that they were not paid by the State of New York; but when the amendment is offered here by the gentleman from Delaware [Mr. Miller], the gentleman from Kings [Mr. Bergen] rises at once and gives a construction to this language, or rather seeks to enforce upon this Convention, the

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propriety of the State paying the fees or salaries of the local officers in the city of New York. Now, sir, we have in the city of New York supreme court judges who are paid by the State. I ask why should the city of New York be favored any more in this respect than the city of Buffalo or the city of Rochester, or any other city in the State? All these officers are local officers and should be paid by their localities. I hope the amendment presented by the gentleman from Delaware [Mr. Miller], will prevail.

Mr. BECKWITH—I, also, hope this amendment will prevail. I think there should be no doubt upon this question. When it came up in Committee of the Whole, several gentlemen insisted that the provision, as it now stands, would not throw upon the State the expense of supporting the local courts. I do not suppose that the city of New York wishes the State to defray the expense of their local courts, and leave the rural districts to support their own local courts. The county courts of the several counties in this State, in which original jurisdiction is given, as contemplated by this article, will have to be supported by the counties; and to compel the rural districts, as a part of the State, to support the local courts of the city, seems to me is unjust. Those local courts are organized for their special benefit, and therefore, they should defray the expense; and I think there should be no doubt in the language of the Constitution upon this question.

Mr. EVARTS—It strikes me, Mr. Chairman, that there should be no objection on the part of the gentleman from Kings [Mr. Bergen] to this amendment. It is certainly very proper that we should bear the extraordinary expenses of our extraordinary courts.

Mr. VERPLANCK—I feel a little delicacy in saying a word in reference to this question. But I wish to call attention to the fact that each locality pays the expenses of courts, with the exception of the salary of judges, and I submit that it is fair that the State should pay the salaries of the judiciary throughout the entire State.

Mr. S. TOWNSEND—I hope the amendment of the gentleman from Delaware [Mr. Miller] will not prevail, but on the contrary, that this class of officers in the city of Buffalo and New York, and in the county of Kings and some other parts of the State, may be embraced under the same arrangement as the class of officers that do the supreme court business, and may be paid by the State. As the gentleman from Erie [Mr. Verplanck] has just said, the larger portion of the expenses of the State, except the salary of the judges is now paid by the locality The discussions of this Convention have shown us the fact that, a very large portion of the general business of the State is concentrated in the city of New York. For some reason or other, the profession choose to carry their cases there, which is complimentary, undoubtedly, to the judiciary of those localities. Last evening, in some very interesting and impressive remarks, the gentleman from Ulster [Mr. Hardenburgh], in enforcing his amendment, which was lost only by a tie vote, said that five-sixths of the higher class of jurisprudence in this State was done along the banks of the North river. I do not wonder that the tax payers in two of those counties, Kings and New York, resist the further continuance of a system of that kind; for upon those counties is impressed a jurisdiction and litigation that does not fairly belong to them, and that class of jurisdiction they are required to pay for, while the other fifty-eight counties have their charges paid out of the general State treasury. These are unfair conditions which ought not to remain, but they undoubtedly do exist in the city of New York. I took occasion to state, some days ago, with regard to the returns of the jurisprudence of New York, that I saw an item of over a half million of dollars charged upon county expenses; what portion of that is for the salary of judges I am unable to say. I hope this amendment will not prevail, but that we shall retain the section as it is, and in retaining it, we should affirm the position of my friend from Kings [Mr. Bergen], that, if that class of officers is to be constitutionalized, their salaries shall be charged upon the treasury of the State.

Mr. MURPHY—It is undoubtedly true, as said by my colleague [Mr. Bergen], that these local courts in the county of Kings do an amount of business that would otherwise devolve upon the supreme court of the State. That court also does a great deal of business that might be done by the county court, which is undoubtedly a tribunal of great convenience to the city and county. I do not know that there has been any objection on the part of the people of the city of Brooklyn or the county of Kings to the payment of these salaries out of the local treasury. There are reasons to my mind why they should be so paid. I think we will find difficulty, under the system of salaries that exists in the State at large, to find gentlemen of proper ability and learning to take the position of judges in that court. I therefore hope the amendment of the gentleman from Delaware [Mr. Miller] will be adopted in order that all doubt which may exist may be removed.

Mr. BERGEN—May I ask the gentleman a question?

The PRESIDENT—The gentleman has spoken once upon this question, and cannot speak again without unanimous consent.

Objection was made.

The question was put on the amendment offered by Mr. Miller, and it was declared carried.

Mr. FOLGER—I offer the following amendment: In line five, after the word "jurisdiction," insert the words "and powers." This is to supply a mere clerical omission.

The question was put on the amendment offered by Mr. Folger, and it was declared carried.

Mr. COMSTOCK—I move to strike out the word "vacancies," in the thirteenth line, and all that follows it, down to the word "provided," in line eighteen, and insert these words: "The provision for filling vacancies in office made by section 10 of this article shall apply to the courts and judges named in this section." I do not know whether I need explain it. Any one will perceive that a vacancy happening under the section as it now reads—a vacancy happening to-day may be filled at the election to-morrow—and you may have a

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hostler or a cobbler for a judge of the superior court. I have framed the provision as it has been adopted in relation to the other courts.

Mr. RUMSEY—That provision is in there already, in line sixteen: "And until such general election, in the same manner as vacancies in the office of justice of the supreme court, as is hereinbefore provided."

Mr. COMSTOCK—No, sir; it is not there. It reads, "Vacancies in said courts shall be filled by the electors of said cities, respectively, at the general election next after the vacancy shall occur."

Mr. RUMSEY—Read right on the next sentence.

Mr. COMSTOCK—The vacancy may happen to-day and the general election to-morrow. I intend to provide that the vacancy shall happen three months before the general election. That we have adopted in regard to the other courts; so that it cannot be filled at the next election, unless three months shall intervene.

The question was put on the amendment offered by Mr. Comstock, and it was declared carried

Mr. LAPHAM—I offer the following amendment: Strike out all after the word "provided" in line eighteen to and including the word "or" in line nineteen, and insert these words: "the Governor may from time to time designate." It will be seen, as the section now reads, that it authorizes the Legislature by a permanent act to designate one or more of the judges of each of the courts to hold special terms and circuits of the supreme court. The Legislature, under the language of this section, may make a permanent provision that A B, or C D, of those courts, shall be competent to hold circuits and special terms without limit. My proposition is to leave that power as it now is, with the Governor, with regard to extraordinary courts, leaving it for the Governor to designate, if there is a public necessity, instead of providing it by a legislative act.

Mr. BARKER—I hope this amendment will prevail. I have very great doubt as to the wisdom of the provision that any judge of this local court shall be entitled to have the power to take a seat in the supreme court. It certainly has the effect to take away from the suitor that power of election which he ought to have, to plant his suit in a court where he knows the character, the standing, the partialities and prejudices of the judges who are to preside. This, as it now reads, leaves it to the Legislature, as my friend has truly said, to mingle these jurisdictions; and I think if they ever sit in the supreme court, it should be by a special commission from the Governor.

Mr. FOLGER—The provision of the section as it reads, leaves this matter flexible. The Legislature may provide by law for detailing a judge to hold the circuit or special terms of the supreme court. It leaves it so that it can be changed from time to time. If you adopt the provision of the gentleman from Ontario [Mr. Lapham] you have an iron rule which cannot be changed. By it, no one but the Governor can detail the judge. The gentleman from Chautauqua [Mr. Barker] seems to misapprehend the language of this amendment. It is not to strike it out altogether, but it is to provide that one single person, for all time, the Governor, shall have the power of detailing the judge. The provision of the section leaves it so that the Legislature, from year to year, may change and provide, as they see fit.

Mr. EVARTS—The proposition in the section now sought to be thus amended was introduced by myself, and was received with general consent. I never intended to carry it further than to make it competent for the Legislature, if in their wisdom they see fit, to declare by law. In their law thus declared, they may provide that the Governor should have this power of detailing a judge. This limitation is proper. The Legislature can readily change this, if it is found not to work well. They can modify it if occasion requires. Certainly I have no desire to put into the Constitution an enabling authority for these judges so to act, but leave it for the Governor to determine whether they shall or not, in order to provide for clearing the calendars of the supreme court, should it become necessary, by a proper arrangement of this kind.

Mr. LAPHAM—Mr. President—

The PRESIDENT—The gentleman having spoken once on this question cannot speak again without unanimous consent. No objection being made the gentleman can proceed.

Mr. LAPHAM—I wish to say but a single word. Under this provision, as it now is, the Legislature may pass a law that, the moment the judges are elected in the common pleas and superior courts, they may, by law, determine which of them shall sit in the supreme court and which of them hold other courts; and that is a permanent provision. The power is given.

The question was put on the amendment offered by Mr. Lapham, and, on a division, it was declared lost, by a vote of 25 to 56.

Mr. POND—I offer the following amendment as a substitute for section 15.

The SECRETARY read the substitute, as follows:

"All local courts established in any city or village, including the superior court, common pleas, sessions and surrogates' courts of the city and county of New York, and the superior court of Buffalo, shall remain, until otherwise directed by the Legislature, with their present powers and jurisdiction; and the judges of such courts, or any clerks thereof, in office when this Constitution shall be adopted, shall continue in office until the expiration of their term of office, or until the Legislature shall otherwise direct."

Mr. POND—The proposition which I have submitted, and which I propose to have substituted for this section, is, in substance, section 12 of article 14 of the present Constitution. For one, I think the propriety of constitutionalizing these local courts is very questionable. If it is necessary, while they exist, I think the better way would be to abolish those courts entirely, and to provide a sufficient number of supreme court judges to do the entire business of those cities. By constitutionalizing those courts, I think we, perhaps, in a measure recognize an obligation on the part of the State to pay the judges of them. And especially, if we finally adopt the provision which seems just now to

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have been approved by the committee, allowing the Legislature to call upon them to perform the duties of our supreme court judges in those cities. It strikes me that we had better get rid of this difficulty; and inasmuch as there have been no objections made and no questions raised as to the propriety of the existence of these courts, and no evils growing out of the system inaugurated under or continued under the Constitution of 1846, it seems to me we are not called upon to inaugurate a new system in reference to those local courts. We, by adopting this substitute, get rid of this question presented by the gentleman from Kings [Mr. Bergen], as to the obligation, on the part of the State, to pay the salaries of these officers.

Mr. AXTELL — I move the previous question.

The question was put on the motion of Mr. Axtell, and it was declared carried.

The question was then put on the adoption of the substitute of Mr. Pond, and it was declared lost.

Mr. SPENCER—I move to amend by inserting after "possess" in line six these words: "until otherwise provided by law." My object in offering this amendment is that these courts may not be bound down by a positive provision of the Constitution to the jurisdiction they now possess, because it may be desirable, in the progress of time and events, that the jurisdiction which they have shall be modified, or, perhaps, some of it taken away. To illustrate: The court of common pleas now has, I believe, appellate jurisdiction in cases arising in inferior courts. And it may become desirable to transfer that jurisdiction to some other tribunal, or, at all events, to modify it. Under the provision as it now stands, it can neither be taken away, transferred or modified. I have introduced this amendment for the purpose of calling the attention of the Judiciary Committee and of those who are interested in these courts to this subject.

Mr. COMSTOCK—I hope that the amendment will not prevail for this simple reason: If it does prevail, the Legislature can take away all the jurisdiction of those courts, and that would accomplish the object indirectly sought to be attained more directly by the proposition which has just been defeated. There is no public mischief in permitting these courts, by the Constitution, to retain the jurisdiction which they now have. I have never heard any objection to the nature, character or extent of the jurisdiction which they now enjoy under the laws of the State. I think, therefore, that there may well be an irrepealable jurisdiction, and that it would be unwise to subject these courts wholly to the caprice or the will of the Legislature.

Mr. POND—I would like to hear the amendment read, and I call for the ayes and noes.

The amendment was read by the Secretary.

A sufficient number not seconding the call, the ayes and noes were not ordered.

The question was then put on the amendment of Mr. Spencer, and it was declared lost.

Mr. HADLEY—I have heard no good reason for constitutionalizing these courts, and I therefore move to strike out this section.

Mr. AXTELL—I move the previous question.

The question was put on the motion of Mr. Axtell, and it was declared carried.

Mr. S. TOWNSEND demanded the ayes and noes.

A sufficient number not seconding the call, they were not ordered.

The question was then put on the motion of Mr. Hadley to strike out the section, and it was declared lost by a vote of 30 to 52.

Mr. POND moved a reconsideration of the vote upon the substitute offered by him.

Objection being made to the immediate consideration of the motion, it was laid on the table under the rule.

Mr. ROGERS—There was no quorum voted.

The PRESIDENT—A quorum did vote, according to the mathematics of the Chair. [Laughter.]

There being no further amendment offered to section 15, the SECRETARY proceeded to read section 16 as follows:

SEC. 16. Justices of the supreme court shall be elected by the electors of their respective districts judges of the superior court of the city and county of New York, and of the court of common pleas of the city and county of New York, by the electors of that city and county; and judges of the superior court of the city of Buffalo, by the electors of that city. The said justices and judges elected under this Constitution shall hold their offices for the term of fourteen years. The justices and judges of the present supreme and superior courts and courts of common pleas, shall be justices and judges of the said courts hereby established during the terms for which they were respectively elected.

Mr. E. A. BROWN—I offer the following amendment, upon which I demand the ayes and noes: "Strike out 'fourteen' and insert 'eight,' in line 8, reducing the term to eight years."

Mr. COLAHAN—I move the previous question.

Mr. MURPHY—I would like to offer an amendment.

Mr. COLAHAN—I withdraw my motion for the previous question, to enable my colleague [Mr. Murphy] to offer his amendment.

Mr. MURPHY—I offer the following amendment to this section to make it conform to the amendment already adopted: To insert in line 4 the words, "and the judge or judges in the city of Brooklyn," and to amend the sixth line so as to read, "of these cities respectively."

The PRESIDENT—The Chair would inform the gentleman from Kings [Mr. Murphy] that his amendment is not germane to the amendment of the gentleman from Lewis [Mr. E. A. Brown], and cannot be considered until that proposed by the gentleman from Lewis shall have been disposed of.

Mr. COLAHAN—I renew my motion for the previous question.

The question was put on the motion of Mr. Colahan, and it was declared lost.

Mr. ROGERS—I call for the ayes and noes on the amendment.

A sufficient number seconding the call, the ayes and noes were ordered.

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The question was put on the amendment offered by Mr. E. A. Brown, and it was declared lost by the following vote:

Ayes—Messrs. N. M. Allen, Archer, Axtell, Ballard, Bell, Bickford, E. P. Brooks, E. A. Brown, Cheritree, Cooke, Eddy, Field, Goodrich, Grant, Graves, Hadley, Hammond, Hand, Hiscock, Hitchcock, Landon, M. H. Lawrence, Lee, Ludington, McDonald, Merwin, Murphy, Nelson, Pond, Potter, Prindle, L. W. Russell, Schumaker, Seaver, Sheldon, Smith, Spencer, Stratton, M. I. Townsend, S. Townsend, Wales, Williams, Young —43.

Noes—Messrs. A. F. Allen, Andrews, Baker, Barker, Barto, Beadle, Beckwith, Bergen, Bowen, E. Brooks, W. C. Brown, Chesebro, Colahan, Comstock, Corbett, Curtis, Daly, Duganne, C. C. Dwight, Ely, Endress, Evarts, Farnum, Ferry, Flagler, Folger, Francis, Fuller, Garvin, Gould, Gross, Hardenburgh, Harris, Hatch, Houston, Hutchins, Ketcham, Kinney, Krum, Lapham, A. Lawrence, Livingston, Magee, Mattice, Merrill, Merritt, Miller, Monell, More, Morris, Opdyke, C. E. Parker, President, Prosser, Rathbun, Reynolds, Robertson, Rogers, Rumsey, Schell, Silvester, Tappen, Van Campen, Van Cott, Verplanck—65.

Mr. COOKE—I offer the following amendment—

The PRESIDENT—The Chair will inform the gentleman that we are still under the operation of the previous question. The question is now on the amendment offered by the gentleman from Kings [Mr. Murphy], which will be read for information.

The SECRETARY read the amendment.

The question was put on the adoption of the amendment of Mr. Murphy, and it was declared carried.

Mr. SMITH—I move to strike out "fourteen" in line eight, and to insert "twelve" in lieu thereof, and upon this I demand the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY proceeded with the call of the roll.

The name of Mr. Murphy was called.

Mr. MURPHY—I ask to be excused from voting, for these reasons: I was in favor of what is called the "independence of the judiciary," though in favor of the election of judges by the people. I was, therefore, in favor of the long term of fourteen years for the judges, without then being eligible to re-election; but, as the Convention, in its wisdom, has thought proper to strike out the clause which provided for their non-re-eligibility in the election of judges, and as I feel it to be my duty to vote for the shortest term in order that the judges may be under the control of the people, I have voted for eight years and I will now vote for twelve, that being the fewest number of years. I therefore withdraw my request to be excused.

The PRESIDENT—The gentleman cannot withdraw it without the consent of the Convention.

The question being put on excusing Mr. Murphy from voting, and it was declared lost by a vote of 45 to 53.

Mr. MURPHY—I vote "aye."

The SECRETARY proceeded with and concluded the call of the roll on the adoption of the amendment offered by Mr. Smith, and it was declared lost by the following vote:

Ayes—Messrs. N. M. Allen, Archer, Axtell, Baker, Ballard, Bell, Bickford, E. P. Brooks, E. A. Brown, Cheritree, Cooke, Eddy, Field, Fuller, Goodrich, Grant, Graves, Hadley, Hammond, Hand, Hiscock, Hitchcock, Kinney, Landon, A Lawrence, M. H. Lawrence, Lee, Ludington, Mattice, McDonald, Merwin, Murphy, Nelson, Pond, Potter, Prindle, L. W. Russell, Schumaker, Seaver, Sheldon, Smith, Spencer, Stratton, M. I. Townsend, S. Townsend, Wales, Williams, Young—48.

Noes—Messrs. A. F. Allen, Andrews, Barker, Barto, Beadle, Beckwith, Bergen, Bowen, E. Brooks, W. C. Brown, Chesebro, Colahan, Comstock, Corbett, Curtis, Daly, Duganne, C. C. Dwight, Ely, Endress, Evarts, Farnum, Ferry, Flagler, Folger, Fowler, Francis, Garvin, Gould, Gross, Hardenburgh, Hatch, Houston, Hutchins, Ketcham, Krum, Lapham, Livingston, Magee, Merrill, Merritt, Miller, Monell, More, Morris, Opdyke, A. J. Parker, C. E Parker, President, Prosser, Rathbun, Reynolds, Robertson, Rogers, Rumsey, Schell, Silvester, Tappen, Van Campen, Van Cott, Verplanck—61.

Mr. COOKE—I now offer the following amendment to section 16: strike out in lines six and seven the words "and judges elected under this Constitution," and insert "of the supreme court;" and after the word "years" in line eight insert "and the judges of local courts provided for in section 15 of this article, shall hold their offices for eight years respectively." It will be seen that this amendment proposes to discriminate in respect to the term of office between the justices of the supreme court and the judges of these local courts. It does seem to me to be taking a pretty long stride to create by constitutional provision, these several local courts, including the courts of common pleas and the superior court of the city of Buffalo, and the city court of Brooklyn, and give the judges this long term of office. I have not heard any argument advanced in favor of long terms for the higher judges that can apply to these courts. It has seemed to me from the beginning, that if we increase the term of office of the judges of the court of appeals to fourteen years, or for life, which would have suited me better, and then have terms of office of the justices of the supreme court and of the minor local courts eight years, the system would be harmonious and satisfactory, and proper, in regard to justices of the supreme court who are elected by districts. Where one district has a right to elect a judge to exercise jurisdiction and power throughout the entire State, it seems to me that it violates the principle of the people's choosing their own judges, to have the judges elected for these long terms, and placed entirely beyond the people's reach or control. If there is any thing at all in the idea of the people selecting their own judges, it would seem to require that the people should keep their judges in hand—keep them where they can exercise some discretion in regard to their continuance in office. But the sense of the Con-

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vention is that justices of the supreme court, as well as judges of the court of appeals, shall hold office for fourteen years. Now, I propose by this amendment to see whether the Convention also think it best to have the judges of these local minor courts elected for a like term, and if so, I do not know why we should not carry out the system down to county courts or even justices' courts.

Mr. MERRILL—I move the previous question.

Mr. EVARTS—Will my friend do me the favor to withdraw his motion for the previous question for a moment?

Mr. MERRILL—I withdraw it.

Mr. EVARTS—I cannot think, Mr. President, that the Convention should make the distinction which is proposed by the amendment of the gentleman from Ulster [Mr. Cooke]. Certainly it is a question which belongs much more to the communities where the courts are constituted and are to exercise their jurisdiction than to the rest of the State. The gentleman from Ulster [Mr. Cooke] is in error in speaking of them as inferior courts, in comparison with the supreme court, as respects their jurisdiction, or as respects appeals from their judgments. The appeal from them lies directly to the court of appeals, and their jurisdiction is equally extensive with that of the supreme court.

Mr. COOKE—Is it not true that their jurisdiction depends—

Mr. BERGEN—I rise to a point of order. The gentleman from Ulster [Mr. Cooke] has already spoken once upon this question.

The PRESIDENT—The point of order is well taken.

Mr. EVARTS—These judges are also elected by a constituency larger in the number of voters than the constituency electing the supreme court judges under the provisions now adopted by the committee. Let us, then—for I believe the judgment is nearly unanimous in those parts of the State where these courts are to exercise their jurisdiction—have a more firm and stable tenure of office for these judges, as has been established, I think wisely, for the judges of the supreme court. We do not find that changes in the judges necessarily improve the character of the incumbents; and we are not desirous of frequent repetitions of elections; and whether the judges are wholly satisfactory or not, the longer their tenure lasts the better they are.

Mr. MERRILL—I renew the motion for the previous question.

The question was put on the motion of Mr. Merrill, and it was declared carried.

Mr. COOKE—I call for the ayes and noes on this amendment.

A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY proceeded to call the roll of Delegates.

The name of Mr. M. I. Townsend was called.

Mr. M. I. TOWNSEND—I desire to be excused from voting. If I understand the question, in a section already adopted, discriminations have been made between the judges of the local courts that have been referred to and the judges of the supreme court as to their tenure of office. The judges of these local courts discharge, in the localities, the same duties as the judges of the supreme court; and I do not see why a distinction should be made; and, although I am in favor of eight years tenure, I am still more strongly in favor of a rule which shall apply to all men alike in similar positions, without unjust discriminations.

The question was put on excusing Mr. M. I. Townsend from voting, and it was declared lost.

Mr. M. I. TOWNSEND—I vote "no."

The SECRETARY completed the call of the roll, and the amendment of Mr. Cooke was declared lost, by the following vote:

Ayes—Messrs. Archer, Ballard, Bell, E. P. Brooks, E. A. Brown, Cooke, Eddy, Goodrich, Grant, Graves, Hadley, Hammond, Hand, Hitchcock, Ketcham, Kinney, Krum, M. H. Lawrence, Mattice, McDonald, Merwin, Murphy, Nelson, Pond, Prindle, Rathbun, Sheldon, Stratton, S. Townsend, Wales, Williams—31.

Noes—Messrs. A. F. Allen, Andrews, Baker, Barker, Barto, Beadle, Bergen, Bickford, Bowen, E. Brooks, W. C. Brown, Cheritree, Chesebro, Colahan, Comstock, Corbett, Curtis, Daly, C. C. Dwight, Ely, Endress, Evarts, Farnum, Ferry, Folger, Fowler, Fuller, Garvin, Gould, Gross, Hatch, Houston, Hutchins, Landon, Lapham, A. Lawrence, Livingston, Ludington, Magee, Merrill, Merritt, Miller, Monell, More, Morris, Opdyke, A. J. Parker, C. E. Parker, President, Prosser, Reynolds, Rogers, Rumsey, L. W. Russell, Schell, Seaver, Silvester, Spencer, Tappen, M. I. Townsend, Van Campen, Van Cott, Verplanck, Wakeman—64.

Mr. PRINDLE—I offer the following amendment, to be inserted at the end of the section: "But no person shall hold the office of judge of the supreme court longer than until the first day of January next, after he shall have arrived at the age of seventy years." We have already, by a large majority, adopted this provision in regard to the judges of the court of appeals, and I suppose the same reasons apply to the justices of the supreme court, and perhaps with greater force.

The question was put on the amendment of Mr. Prindle, and it was declared carried.

Mr. STRATTON—I move to strike out in the second line the word "districts," and to insert next thereto the word "departments." This Convention came to the conclusion, some time ago, that in the election of officers we should get better men—men of greater capacity—when they were elected from the large constituencies; and it is with that view, and for the purpose of getting the better class of men for judges, that I move this amendment.

Mr. A. J. PARKER—I do not propose to discuss that question. It was reconsidered in committee, and by a very decided vote we determined to elect the judges by districts, for reasons that the committee no doubt deemed entirely satisfactory. I can only say that I should regard it as a great misfortune if this amendment should be adopted, and I ask for the ayes and noes upon it.

Mr. EVARTS—As I understand the proposition, it is that the election of the judges shall be by departments, as provided in the Judiciary Committee's report.

Mr. STRATTON—It is.

Mr. EVARTS—I hope, notwithstanding what

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may have been done in Committee of the Whole, the Convention will determine that the election shall be by a large constituency rather than by a smaller.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was then put upon the amendment of Mr. Stratton, and it was declared lost by the following vote:

Ayes—Messrs. Andrews, Bell, Comstock, Cooke, Corbett, Curtis, Daly, C. C. Dwight, Eddy, Ely, Evarts, Farnum, Ferry, Folger, Fowler, Garvin, Gould, Gross, Hiscock, Hutchins, Ketcham, Kinney, Krum, A. Lawrence, Magee, McDonald, Merritt, Miller, Monell, Morris, Opdyke, President, Rathbun, Reynolds, Rogers, Silvester, Stratton, Van Campen, Wakeman—39.

Noes—Messrs. A. F. Allen, Archer, Baker, Ballard, Barker, Barto, Beadle, Bergen, Bickford, Bowen, E. Brooks, E. P. Brooks, E. A. Brown, W. C. Brown, Case, Chesebro, Colahan, Endress, Fuller, Goodrich, Grant, Graves, Hadley, Hammond, Hand, Hardenburgh, Hitchcock, Houston, Landon, M. H. Lawrence, Lee, Livingston, Ludington, Mattice, Merrill, Merwin, More, Murphy, Nelson, A. J. Parker, C. E. Parker, Pond, Prindle, Prosser, Robertson, Rumsey, L. W. Russell, Schell, Schumaker, Seaver, Smith, Spencer, Tappen, M. I. Townsend, S. Townsend, Van Campen, Van Cott, Verplanck, Wales, Williams, Young—60.

Mr. KINNEY—Since the long term of fourteen years has been retained, I propose to limit the election of judges to a single term, and I therefore offer the following amendment, and call for the ayes and noes upon it. In the eighth line after the word "years" insert "but shall not be elected for a second term."

Mr. RUMSEY—I rise to a point of order. That question has been distinctly passed upon already.

The PRESIDENT—The Chair thinks the point of order well taken.

Mr. EVARTS—With great respect to the Chair I would inquire in what way has this question been passed upon in reference to these courts? It has been passed upon in reference to the court of appeals, but never in Convention in regard to these courts. We have a right to have the ayes and noes upon this question.

The PRESIDENT—The Chair was under the impression that it had been passed upon last evening; but the gentleman from New York [Mr. Evarts] is correct.

Mr. COMSTOCK—Having decided against ineligibility in regard to the court of appeals, I think it will be found difficult to point out any reason for discriminating between the court of appeals and the supreme court, and the other courts here mentioned. I am, therefore, opposed to the amendment now offered.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was put on the amendment of Mr. Kinney, and it was declared lost by the following vote:

Ayes—Messrs. N. M. Allen, Bell, E. P. Brooks, E. A. Brown, Case, Colahan, Curtis, Daly, Ely, Evarts, Farnum, Ferry, Gould, Hammond, Houston, Hutchins, Ketcham, Kinney, M. H. Lawrence, Ludington, Merritt, Miller, Morris, Murphy, Nelson, Opdyke, A. J. Parker, Prindle, Schell, Schumaker, Smith, Stratton, Van Cott, Williams, Young—35.

Noes—Messrs. A. F. Allen, Andrews, Archer, Baker, Ballard, Barker, Barto, Beadle, Beckwith, Bergen, Bickford, Bowen, E. Brooks, Chesebro, Comstock, Cooke, Endress, Folger, Fowler, Fuller, Garvin, Goodrich, Grant, Graves, Gross, Hadley, Hand, Hardenburgh, Hiscock, Hitchcock, Landon, A. Lawrence, Lee, Livingston, Magee, Mattice, McDonald, Merwin, Monell, More, C. E. Parker Pond, President, Prosser, Rathbun, Reynolds, Robertson, Rumsey, L. W. Russell, Silvester, Spencer, Tappen, M. I. Townsend, S. Townsend, Verplanck, Wakeman, Wales—57.

Mr. A. F. ALLEN—I move the previous question on the adoption of this section.

The question was put on the motion of Mr. A. F. Allen, and it was declared carried.

The question was then put on the adoption of section 16, and the section was declared carried.

Mr. McDONALD—I move to reconsider the vote by which this section has been adopted, in order to substitute twelve years for fourteen.

The PRESIDENT—The motion will be received, and will lie on the table under the rule.

The SECRETARY read section 17 as follows:

SEC. 17. All the judges and justices of the courts of record, hereinbefore mentioned in this article, shall receive at stated times for their services, a compensation to be fixed by law, which shall not be diminished during their respective terms of office.

Mr. KETCHAM—I move to amend by striking out the word "hereinbefore" in line two, and all after the word "law" in line three.

The question was put on the amendment of Mr. Ketcham, and it was declared lost.

Mr. BICKFORD—It strikes me that there should be an amendment, so that the compensation of the judges of the local courts should not be fixed by law, but should depend upon the boards of supervisors or some other local authority.

Mr. FOLGER—This section only applies to courts of record.

Mr. BICKFORD—Are not the courts of common pleas courts of record?

Mr. FOLGER—Yes, but the gentleman spoke of "superior courts."

Mr. GRAVES—I ask that the words "or increased" may be inserted after the word "diminished," in the fourth line.

The question was put on the amendment of Mr. Graves, and it was declared lost.

There being no further amendments to section 17, the SECRETARY read section 18 as follows:

SEC. 18. There shall be elected in each of the counties of this State, except the city and county of New York, one county judge, who shall hold his office for four years. He shall hold the county court and perform the duties of the office of surrogate. The county court as at present existing shall be continued with such original and appellate jurisdiction as shall from time to time be conferred upon it by the Legislature. The

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county judge with two justices of the peace, to be designated according to law, may hold courts of sessions, with such criminal jurisdiction as the Legislature shall prescribe, and perform such other duties as may be required by law. The county judge shall receive an annual salary, to be fixed by the board of supervisors, which shall not be diminished during his continuance in office. The justices of the peace for services in courts of session shall be paid a per diem allowance out of the county treasury. In counties having a population exceeding forty thousand the Legislature may provide for the election of a separate officer to perform the duties of the office of surrogate, whose term of office shall be the same as that of the county judge, and all surrogates in office when this Constitution shall take effect shall hold their respective offices until the expiration of the terms for which they were respectively elected. Inferior local courts of civil and criminal jurisdiction may be established by the Legislature.

Mr. KETCHAM—I move to strike out all after the word "judge," in line seven, to the word "may," in line eight, and to strike out all after the word "office," in line thirteen, to the word "in," in line fifteen. This amendment simply does away with the office of justice of the sessions. I have nothing to say on that subject in addition to the remarks I submitted when this subject was under consideration in Committee of the Whole. The proposition then seemed to excite some dislike and opposition on the part of the gentleman from Kings [Mr. Bergen] because of an apprehension that the full management of the judiciary was going to be given to the lawyers—the fear that they were going to "monopolize" it, as he said. Being myself a farmer, I should be very unwilling to see any such monopoly as that; but while we have juries in criminal trials who are made by law the judges of the facts in each case, I do not see how there can be any such danger from abolishing this office. In a former discussion on this subject, two or three uses were suggested to which these justices might be put. One was that the presiding judge could consult them as to who should be appointed foreman of the grand jury. Now, sir, when there is any doubt upon that subject in the mind of the judge, the district attorney, or the sheriff, or the county clerk is apt to be consulted, and I think very properly, and either of these officers can probably give as good advice in regard to the matter as these justices can. Another use to which it was suggested they might be put, was with reference to influencing sentence in criminal cases. Now, sir, I did know of a case where these justices did interfere in fixing the sentence of a criminal. A man was indicted for assault and battery with intent to kill, but was convicted simply of assault and battery. The case was a very aggravated one; the proof showed that the prisoner had inflicted seven wounds by stabbing, one of which must necessarily have proved fatal had not medical attendance been at once procured; but the justices of the sessions overruling a justice of the supreme court, I think, imposed a fine upon that man of six cents! I know another case where the expense of supporting a child was sought to be imposed upon a man other than the husband of its mother—the husband and wife the whole time residing in the same neighborhood. In this case the resemblance of the child was made a ground by the associate justices, of overruling the county judge and reversing the Revised Statutes, and subjecting the defendant to the expense of a certiorari to the supreme court. I never heard of but one instance of a justice of the supreme court at oyer and terminer, or of a county judge at the sessions, supposing he was in any manner aided or assisted by the associate justices in the discharge of any duty whatever, and that was stated by the honorable gentleman from Herkimer [Mr. Graves]. It was made a subject of gratulation by the Convention of 1846, that they had abolished a great number of useless offices, and they deserve some credit for it: but they abrogated none, in my judgment, more useless than this one which they did not abrogate. But one gentleman thinks they should be retained to prevent a tie in the decision of questions on the bench. It seems to me that with but one judge on the bench, the decisions would be ordinarily pretty unanimous. [Laughter.] I do not think he would be very apt to tie. No sir. It is an office awarded for a little political service or influence, with really no duties attached except to look wise and draw pay. The retention of the office is the source of considerable expense to the State, and for which no service whatever is rendered. Nor is the expense of the office covered by the per diem and mileage paid to them, because by their ruling against the presiding judge, as in one case to which I have referred, and another to which I might refer in Dutchess county, the State and parties are subjected to a large expense in being compelled to go through with the farce of a new trial. Could I see the side justices done away with and abolished, and the salary of the county judge fixed by the Legislature instead of the board of supervisors, and their jurisdiction extended and the term of office prolonged, as I proposed in the Committee of the Whole, I should feel as though we had done much to increase the dignity and enlarge the usefulness of the county courts.

Mr. HAND—I hope this amendment will be adopted. We have listened with a great deal of attention and instruction to the accounts that have been given us of the glories of this "independent judiciary" away up where mere laymen can hardly dare to look at it, above all popular influences, just like the governments we read of away back in the dark ages. Now, I should be sorry to mar the beauty of this picture by introducing some farmer from the backwoods who had never seen a law book, and have him step upon the stage of action and overrule some member of this glorious, immaculate, never-to-be-touched-or-looked-at-judiciary, [laughter], so exalted above very influence from the people! I would be sorry, I say, to have this picture marred by the introduction of any such popular element, and I therefore hope this amendment will prevail.

Mr. BERGEN—I hope, sir, that this amendment will not prevail. The effect of it will be, as I understand it, to prevent justices of the peace from sitting in criminal courts. Now, sir,

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in the criminal courts of this State, since the first settlement of the State, justices of the peace have had a place on the bench with the presiding magistrates. That has been the system since the foundation of our government, and under the old Constitution, instead of two justices, there were some half dozen or more associated with the judge upon the bench. In nearly all the States of the Union, or at all events, in several of them, and perhaps in all—for I have not examined the subject—justices of the peace have seats upon the bench in criminal cases, and, in my view, the provision is a wise one. The association of these justices with the judges of these courts has given satisfaction to the people, and, as I said before, it is necessary, in fixing the sentences of criminals, that several individuals should be consulted, instead of having the sentence determined by the arbitrary opinion of one man. No man is convicted of any serious crime without the intervention of a jury of laymen who have to decide the question of his guilt or innocence, and it is a wise provision that in fixing upon the punishment, the opinions of more than one individual should be taken. This one individual may be prejudiced, and I have known cases where the presiding magistrate was prejudiced, and where, if he had been allowed to act alone in the matter, his prejudices would have swayed his judgment, and an unjust punishment would have been the consequence. And, sir, I hold that the interests of the people of this State require that the opinions of more than one individual shall be taken in determining the extent of the punishment to be given to the criminal. And if this innovation should be adopted, I am satisfied that evil consequences would result. These justices are not the ignorant individuals that some persons here think them to be. They are not so in my portion of the State, and I doubt whether they are in any other portion of the State. Justices of the peace are, generally, men who are selected, in the first place, by their localities, in consequence of their qualifications, and elevated to the office of justice, and then justices of the sessions are selected by the whole county from the body of justices, and, under the present system, one of each political party is placed on the bench, so that, in case political prejudices should have any effect upon the mind of the presiding judge, the opposite party has a representative upon the bench, in a measure to thwart the effect of those prejudices. Gentlemen of the legal profession, and perhaps gentlemen of the medical profession, may have objections to laymen setting upon the bench; but I believe that the mass of the people of this State, who do not belong to what are termed the learned professions, think differently.

Mr. HAND—I would ask the gentleman from Kings [Mr. Bergen] what becomes of the independence of the judiciary if we permit the introduction of this lay element? [Laughter.]

Mr. BERGEN—This element, sir, has been upon the bench from the foundation of our government, and formerly to a larger extent than it is now, and it has always given satisfaction. We have lived under it for a long time, and what evil has resulted from it? None. Why then should we undertake an experiment from which evil may possibly result? We know that from the system as it has been in operation no evil has ever resulted. I say, sir, that we had better continue a system which has operated so satisfactorily rather than adopt another, the operation of which we know nothing.

Mr. S. TOWNSEND—I hope that the large majority that decided this question the other night will hold to the same opinion they have expressed. I would again remind gentlemen that any reflection upon these side justices, who should be the best men, selected from the whole number of the justices of the peace of the State, must affect the six thousand justices of the peace in this State. Again, the professional gentlemen upon this floor ought to remember that, by reason of the characteristics of this class of officers, a very fine opening may be found here for young men—an opening which might exercise a sort of educational influence—somewhat of a legal West Point influence—in fitting them for the duties of the higher courts. I hope the amendment will not prevail.

The question was put on the amendment of Mr. Ketcham, and it was declared lost.

The hour of two o'clock having arrived, the Convention took a recess until seven o'clock P. M.

EVENING SESSION.

The Convention re-assembled at seven o'clock P. M.

Mr. SEAVER—I ask leave to submit two reports from the Committee on Printing.

No objection being made, the SECRETARY read the first report as follows:

The Committee on Printing, to which was referred the resolution of Mr. Archer, directing the Secretary to cause to be bound the debates of the Convention, respectfully recommend the adoption of the resolution.

In pursuance of the authority granted on the 23d of June, the committee further recommend that the copies of the debates remaining after complying with the rules of the Convention, be bound under direction of the Secretary, and that one copy thereof be given to each member and officer; and that the Secretary also cause to be bound in like manner for the members, the files of the debates. J. J. SEAVER, *Chairman.*

Mr. CHESEBRO—I would like to have the chairman of the committee explain to us why it is desirable to bind the debates before they are completed? That will necessarily entail upon us a very great expense. It seems to me unnecessary if they are ultimately to be bound when completed.

Mr. SEAVER—Perhaps it is not necessary, at this time, to bind the debates; but the resolution was referred to the committee and we wish to get it from our hands. Last June the Committee on Printing recommended this disposition of the debates, and asked leave to make the report, and therefore we do so now. The action of the Convention does not necessarily involve the immediate binding of the debates.

The question was put on agreeing to the report of the committee, and it was agreed to.

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The SECRETARY then read a second report from the Committee on Printing, presented by Mr. Seaver, in favor of printing the several articles of the Constitution as perfected by the Convention.

Mr. ALVORD—I trust that report will not be adopted.

Mr. E. BROOKS—I object to its being received.

Objection being made to the report it was not received.

The Convention again resumed the consideration of the report of the Committee on the Judiciary as amended in and reported from the Committee of the Whole. The section under consideration being the eighteenth.

Mr. CHESEBRO—I desire to submit to the Convention this amendment to the eighteenth section.

The SECRETARY read the amendment as follows:

Strike out all after the word "continued" in line five to and including the word "Legislature" in line seven, and insert in lieu thereof the words "and shall have original jurisdiction in all cases where the parties reside in the county in which the damages claimed shall not exceed $1,000, and also such appellate jurisdiction as shall be provided by law; subject, however, to such provision as shall be made by law for the removal of causes into the supreme court, and for limiting appeals from said county court to the supreme court."

Mr. CHESEBRO—It will be seen by the members of the Convention that this amendment I have offered embraces substantially the amendment of the gentleman from Washington [Mr. C. L. Allen], who is not now in his seat. I promised him I would submit the amendment proposed by him, which was subsequently amended on the motion of the gentleman from Onondaga [Mr. Comstock], extending the jurisdiction of the county court and giving it original jurisdiction to the extent of one thousand dollars. But upon a conference with some gentleman, it has been deemed advisable, and I concur in that opinion, that it is better not to designate the particular actions in which county courts shall have jurisdiction, as was proposed by the amendment of the gentleman from Washington, but that the court shall have jurisdiction in all cases to the extent named in the amendment. The objection, as I understand it, to this amendment, is the giving of the county courts original jurisdiction to the extent named. It strikes me, and it is in my experience, and I have no doubt whatever in the experience of every gentleman who has had occasion to do business in that court, that it is better we should recognize that court in the Constitution, and give to it original jurisdiction for the purpose of elevating its character. This amendment, if adopted, will have this effect. In the first place it will relieve the supreme court from the trial and adjudication of a great class of cases which ought not to be tried in justices' courts, and yet ought not to be brought into the supreme court. It will give this court jurisdiction in a class of cases that ought to be brought in some tribunal intermediate between these two courts. It will serve to elevate the character of the court by giving it original jurisdiction in all cases up to the amount named in the amendment. I trust it will receive, although it did not in the Committee of the Whole in the form in which it was drawn by the gentleman from Washington, the approbation of this Convention.

Mr. FERRY—I had supposed it was pretty well understood that the question of conferring jurisdiction upon the county courts would be left open to be acted upon hereafter by the Legislature as circumstances should show to be necessary and wise. Now I hope that we may adopt a system of that character which will enable the supreme court to do the large mass of its business, if not the whole of it, and with reasonable dispatch and to the satisfaction of the public. I would say to the gentleman [Mr. Chesebro] and to the argument he has advanced, that it would be better to wait until time shall demonstrate the necessity of conferring this jurisdiction upon the county courts. One court is better than two, if one court can do the business; and if it shall become necessary hereafter, the Legislature can supply what courts are needed. It is better, inasmuch as the Legislature has full power over the subject, that we should wait and see what experience may show to be the wisest course to adopt.

Mr. E. A. BROWN—I am not favorably disposed toward the amendment of the gentleman from Ontario [Mr. Chesebro]. If he will take the trouble to look at the original law conferring original jurisdiction upon the county courts, which to some extent was held to be unconstitutional, he will find that the exercise of power on the part of the Legislature in that respect has been reasonable and has given as much jurisdiction to these courts as they ought to have. The proposition as made extends the jurisdiction to cases of one thousand dollars. That will embrace a very large class of cases. And while it may be very desirable for the plaintiff to select the court in which he may desire to have his action brought, it should be remembered that there is another party to every action who does not have any choice before him. He is elected to go into a county court when there may be reasons sufficient in his mind for him to desire his case to be tried in some other court.

Mr. CHESEBRO—The amendment I have suggested was intended to meet precisely the objection mentioned by the gentleman from Lewis [Mr. E. A. Brown], and the one suggested by the gentleman from Onondaga [Mr. Comstock], that when a case is brought in a county court by the plaintiff, the defendant may, upon the showing of sufficient cause, remove it by certiorari or otherwise into the supreme court.

Mr. E. A. BROWN—If it is in the option of a defendant to take a case into the supreme court, we only incur the additional labor and additional expense which is liable to be incurred in any and every case under the proposition made by the gentleman. It has been well suggested that the organization of the supreme court was intended to cover substantially all the business of this character, which it was proposed to confer upon county courts. In nineteen-twentieths of the counties of the State, the supreme court is

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abundantly competent to transact all of its business and in a manner generally more satisfactory to parties than it will be likely to be done in the county courts. But, in these nineteen-twentieths of the counties of the State, I do not think there would be any relief afforded to the supreme court in respect to this class of business. It is a relief that they do not need. If the supreme court is of the high character it is supposed to be, or if the county court is of the character it is supposed to be, then all the parties should have a right in the first instance to a trial in that court. I do not think in that respect a relief is needed. In another respect, the supreme court instead of being relieved would be embarrassed by the additional business growing out of appeals which would be multiplied in this class of cases. Because, it is not to be disguised nor can it be denied, that, if this jurisdiction is conferred in the Constitution, beyond the power of legislative control, a large class of cases that never would find themselves placed upon the calendar of a court of record will be brought into it from the county court. It will thereby create appeals to the general term, and they will be more likely to occur than from the circuits. I think it will be eminently wise, as has been suggested, to leave this matter entirely to the Legislature. And, if it is ascertained that the jurisdiction, as now conferred, is too much or too little, it is in the power of the Legislature to lessen that jurisdiction or to increase it. I hope the amendment will not be adopted.

Mr. HARDENBURGH—As I understand the amendment of the gentleman from Ontario [Mr. Chesebro], it simply provides that in cases where more than one thousand dollars are involved, the county court shall not have jurisdiction. I think all difficulty is avoided at once, for a party, who commences proceedings, knows the law as well as we do, and he can select the court in which to present his claim for adjudication. I do not understand there is any fault to be found with this. If his claim is more than a thousand dollars, he can go to another court. There is no difficulty about the matter. I cannot see now why any such limitation should be made, but I rather favor the amendment of the gentleman from Ontario [Mr. Chesebro].

Mr. CHESEBRO—I should like liberty to say a few words. I do not propose to consume any of the time of the Convention. The principal object I had in making this amendment is, as I said in Committee of the Whole, to give to these county courts a degree of respectability to which they really are entitled. I would like to know, and I would like to ask any gentleman who is opposed to this amendment, what objection there is to conferring upon the county courts of any of the counties of this State, a jurisdiction to the extent named by this amendment? There is none whatever. There can be none. We all know that there is selected, in each of the counties of the State, as presiding judge, a lawyer who is generally as competent to decide cases of that character as the judge of the supreme court; and to give him this authority, this power, and this jurisdiction, is simply to relieve the supreme court of a class of cases that never ought to be brought in that court. Look at the calendars of the supreme court in the State of New York. I take my own county as a sample, and I am sure that it is only a sample of the rest. It is incumbered to-day with a class of cases for assault and battery, false imprisonment and malicious prosecutions, which really ought to be tried in the county court, before a judge of the county, who is as competent to preside in the trial of cases of that character, with a jury, as the supreme court judge. Why should the supreme court calendar be lumbered with this class of cases, when there is a court below of competent authority and power to try them? The only objection urged by the gentleman from Lewis [Mr. E. A. Brown] that I can understand, is that the supreme court has the same power. I admit it. But take the different counties of the State and you will see that their calendars are now lumbered up with cases of this description, that really it would be better to have tried in an inferior court, if we may so term it—in a justice's court. These cases are brought to the supreme court simply because the county court has no original jurisdiction. We should make the county court a court of competent jurisdiction to try such cases. I do not know of any reason suggested by the gentleman from Lewis that should inhibit this court from the trial of such cases. If a case is commenced in the county court of a magnitude sufficient to justify its being brought in the supreme court, the defendant has a right to have it so brought, and the amendment I suggest authorizes the Legislature to provide that the case may be taken by certiorari or other process, into the supreme court. Therefore, whatever difficulty might be suggested as to bringing that class of cases in the county court is obviated by the fact that it may be transferred into the supreme court.

Mr. GRAVES—In the opinion of the gentleman [Mr. Chesebro] would that cover about one-half the cases which are pending upon the calendar of the supreme court?

Mr. CHESEBRO—I do not know whether it would cover one-half the cases or not. It is very difficult for any body to determine; but it will cover a large class of cases that ought to be brought in a court different from the supreme court. Beyond desiring to relieve the supreme court from the trial of a class of cases which ought not to be brought before it, and which ought not to incumber its calendar, I desire to elevate the county court. I want it should have original jurisdiction in this class of cases, for the very reason that it will compel the electors of the State to select for the office of county judge a man who is qualified to preside, in not only that class of cases, but cases which necessarily belong to that court—criminal cases of great importance. As the county court is now organized, it is not much more than a higher justice's court. I can see no reason why we should not put into the Constitution this provision. I say we are just as competent to decide what class of cases, and what jurisdiction should be conferred upon the county court, as any Legislature that can be organized; we are just as competent to decide that in regard to county courts, as we are in regard to the supreme court. I know of no reason for referring

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this question to the Legislature any more than I do the question of the jurisdiction that they shall exercise in cases which should be called in the supreme court. I trust the Convention will give to this court a degree of respectability by conferring upon it this original jurisdition, to which it is really entitled, and thus elevate its character.

Mr. A. J. PARKER — I must oppose this amendment, as I opposed it in Committee of the Whole. I believe it would be very injurious to the public interests to adopt it. The mover [Mr. Chesebro] says he wishes to elevate the character of the county court. If it cannot be elevated in any other way, I think we had better leave it where it is. This is too expensive a process—too expensive to suitors, to counsel and to the people. I do not believe the public can be brought to approve of an organization of two courts of original jurisdiction in a county. There can be no necessity for it so long as one court is competent to hear all the cases. You give to each county two or three circuits each year. You can give each as many circuits as are necessary. There is no restriction upon the number of courts that may be held, as to the length of time they may be occupied. The supreme court is organized for the very purpose of trying just such cases as these. The gentleman [Mr. Chesebro] says that the calendar of the circuit is lumbered up with cases of assault and battery, of false imprisonment and malicious prosecutions. I should like to know if there are any more important cases that can be tried than actions of this same class to which he refers. Is there any more important case to be tried than an action for slander or libel, which involves the reputation of a citizen? Is it not quite as important that they should be tried by a judge of the supreme court as it is that a mere claim for money should be thus tried? Does the mover of this amendment think that actions for false imprisonment are a trifling matter, and that they can be tried by some justice of the peace?

Mr. CHESEBRO—Does the gentleman [Mr. A. J. Parker] ask me the question with the desire that I shall answer it?

Mr. A. J. PARKER—Certainly.

Mr. CHESEBRO—If I understand the amendment, it limits the amount of damages claimed to one thousand dollars, and if any body chooses to bring an action in a county court in which he does not claim beyond that amount, he may do so; but he is not inhibited by the amendment from bringing his action in the supreme court if he chooses.

Mr. A. J. PARKER—The amount the amendment names is larger than the majority of recoveries; but the cases are none the less fundamental in their character. A man's character may be vindicated with much less damages than that, upon a full and fair trial before the public, where there is an opportunity of showing that the charge is unfounded. Most of the actions for assault and battery recover, perhaps, less damages than the amount specified in the amendment, but is that a reason for saying the case shall be tried by an inferior magistrate? Is that a reason that the person, which has been deemed sacred, is not to be protected, and his rights tried before a judge in the highest court of original jurisdiction? I confess I look very differently upon this class of cases from the mover of this resolution. If we wish to make a distinction at all, I would give the lower magistrate cognizance of cases for money. Cases for the recovery of damages, for false imprisonment and for the protection of the person from any legal assault are higher cases, they belong to the circuit judge, and they should be brought in the supreme court and should be tried there. I do not like to hear gentlemen of the profession speak of "lumbering" up the calendar of the circuits with cases like these. That is the place for them. They should be brought there; and I, for one, shall vote against this amendment. I prefer to leave it to the Legislature, hereafter, to give jurisdiction to the county court if they shall find it necessary. But I do not think it will be found necessary. I believe that we simplify the system, having but one court of general jurisdiction to hear and determine all these cases.

Mr. GRAVES—The gentleman who has submitted this amendment has done so, I have no doubt, desiring that the jurisdiction of county courts should be enlarged to facilitate the administration of justice. But I must say, that I believe the gentleman has not taken into consideration the amount of labor that now devolves upon the county courts of this State. It will be remembered by this Convention, those of us at all events who are familiar with the duties of the county courts, that all the criminal matter connected with the supreme court within the jurisdiction of the county court, are thrown off by the supreme court upon and are discharged by the county court. In addition to that, recently, there has been a statute passed which permits the county court to try and retry cases which have been brought in justices' courts where the amount claimed exceeded fifty dollars, and where the recovery in the justice's court was fifty dollars. That throws upon the county court an additional amount of labor to that which it has performed heretofore. As the county courts are instituted, and as they do their work, they are in session a longer time than are the circuit courts in the several counties of the State. Circuit courts usually close their labors in one week, and it is not uncommon now that the county courts are in session in the trial of criminal and other cases for two weeks. In addition to that they have a large amount of review or appealed cases that are to be brought upon argument and not before a jury. In addition to that, there are judges in a very great number of the counties of the State who are surrogates—and those two duties put together require the undivided attention of the county judge. So that, unless there is a clear and absolute necessity for taking away business from the supreme court and giving it to the county court, that power should not be granted to them—because the county judge has more work to do in criminal business, appealed business and surrogate business than is done by any one of the supreme court judges at their circuits. In my judgment there is no necessity now for an enlargement of that power. As I said in Committee of the Whole, if the time comes that it should be necessary to enlarge the powers of the

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county judges, then the Legislature has, of course, under the present sections of this article, power to enlarge the jurisdiction of these county courts, and thus meet the necessity if any exists. I therefore hope the amendment will not be adopted.

Mr. RUMSEY—I think every gentleman who recollects the practice in the courts before the Constitution of 1846 was adopted, will remember that the old court of common pleas was one of the most respectable courts in the State. It had, I believe, original jurisdiction to the amount of two thousand dollars. The judge of that court was almost invariably a good lawyer, and in that court was tried a very large class of cases, not trifling in their character, but important in principle and amount. The result of the existence of that court was that we had very essentially diminished the amount of business in the supreme court circuits, and they were not lumbered up, as they are now, with business that is referred, from time to time, in almost every instance, to the county judge of the county where it exists. Not only that, but the county court, as it is now organized, deals with the liberty and very nearly with the life of individuals, because it has a criminal jurisdiction that influences the liberty of the individual for a large number of years. These interests are quite as important as those which the gentleman from Albany [Mr. A. J. Parker] is unwilling to trust to the county courts. If we may trust with them the power of sending persons to the State prison for from five to ten years, we can trust with them the power of trying questions which involve simply the characters of persons. There is no difficulty about it. Such cases can be tried as well in the old court of common pleas as they are tried at terms of the supreme court circuits. In my judgment one of the most efficient means we can find for the purpose of enabling our courts to do up their business regularly will be the conferring of this original jurisdiction upon county courts. Every lawyer familiar with the practice knows that, of the great multitude of evils which has resulted from the Constitution of 1846 one of the greatest was the depriving the court of common pleas of original jurisdiction. From that day to this, the supreme court calendars have been lumbered up more than ever before—and there will be no more effectual way, in my judgment, to relieve that court than by returning this jurisdiction to the county courts. Almost invariably the judges of the county court are good sound lawyers—men whom the people will trust, men who are almost invariably selected as referees in cases where, by reason of the press of business in the supreme court, they cannot be tried at circuit. Will any gentleman say that these men are not competent as judges to try cases which they tried as referees?

Mr. CHESEBRO—On the amendment I presented I ask the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The question was put on the amendment of Mr. Chesebro, and it was declared adopted by the following vote:

Ayes—Messrs. A. F. Allen, N. M. Allen, Axtell, Baker, Beadle, E. Brooks, E. P. Brooks, W. C. Brown, Chesebro, Corbett, Corning, Curtis, Daly, Duganne, C. C. Dwight, Eddy, Farnum, Field, Fowler, Fuller, Garvin, Gould, Hammond, Hand, Hardenburgh, Hatch, Hitchcock, Kinney, Lapham, A. Lawrence, M. H. Lawrence, Lee, Ludington, Magee, Mattice, McDonald, Merritt, Monell, Opdyke, Potter, President, Prindle, Robertson, Rumsey, Schell, Smith, Stratton, S. Townsend, Van Cott, Verplanck, Wakeman, Williams —52.

Noes—Messrs. Alvord, Andrews, Archer, Ballard, Beals, Beckwith, Bell, Bergen, Bickford, Bowen, E. A. Brown, Colahan, Comstock, Cooke, Ely, Ferry, Flagler, Folger, Goodrich, Grant, Graves, Hadley, Houston, Ketcham, Krum, Livingston, Merwin, Miller, A. J. Parker, C. E. Parker, Pond, Rathbun, Reynolds, L. W. Russell, Seaver, Silvester, Spencer, Van Campen—38.

Mr. A. J. PARKER—I move a reconsideration of the vote just taken.

Objection being made to the immediate consideration of the motion it was laid on the table.

Mr. COMSTOCK—I now move to strike out in the twelfth line the words "fixed by the board of supervisors" and insert the words "established by law." It is still more evident from the vote which has just been taken in this Convention that these county courts are to become very important tribunals in our jurisprudence. The vote of the Convention has just conferred upon them by constitutional law a jurisdiction in all cases where the amount claimed does not exceed one thousand dollars. That limitation will be found to embrace a very large proportion of legal controversies. I need not enforce the importance of raising up, so far as we can, the character of these courts, and I am sure I need not undertake to show this Convention how much the dignity and the standing of these tribunals will depend upon the compensation to be attached to the office of judge. The Legislature is eminently the proper authority to establish a rate of compensation. It concerns all the counties alike and it concerns alike the people of the State. I commend, therefore, this change in the Constitution to the consideration of the Convention. I hope the amendment will be adopted.

Mr. MAGEE—I rise to give briefly the reasons why I shall vote for the amendment of the gentleman from Onondaga [Mr. Comstock]. It is hardly necessary for me to say that the boards of supervisors are constantly changing. Take them as a whole, so far as the levying of taxes is concerned, they are very capricious. I wish to see the county court elevated to the standard as near as may be of the supreme court. I want the best class of lawyers in the State to occupy the county benches, and I think we cannot expect that, unless we place the matter in such a position that they will be independent of the caprice of the boards of supervisors. I hope the amendment will be adopted, that we may get rid of such a case as we may suppose, where a judge in the county of Onondaga receives a compensation of a thousand dollars, while a judge in another county, performing the same duties, will receive only five hundred dollars, owing to the caprice or misjudgment of the boards of supervisors, or owing perhaps to political considerations.

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The question was put on the amendment of Mr. Comstock, and it was declared adopted.

Mr. FOLGER—I move to strike out in the sixteenth line the word "forty" and insert "sixty," so that the power to separate the office of county judge and surrogate shall only exist in counties which have sixty thousand population instead of forty thousand. This is an amendment in the same direction as that which has just been adopted—an amendment which will tend to increase the character and respectability of that court.

The question was put on the amendment of Mr. Folger, and it was declared adopted.

Mr. AXTELL—I move to strike out in the fifth line the words "as at present existing." These words are surplusage. They amount to nothing, and therefore should not be there.

The question was put on the amendment of Mr. Axtell, and it was declared lost.

Mr. KETCHAM—I move to strike out the word "may" in the sixteenth line and insert the word "shall."

The question was put on the amendment of Mr. Ketcham, and it was declared lost.

Mr. M. H. LAWRENCE—I move to strike out the word "diminished," in the twelfth line, and insert in lieu thereof the word "altered," so that it will read "shall not be altered during his continuance in office." I attach great importance to this county court; and I offer this amendment so that when a judge accepts the office it shall be with the understanding that he does it for so much money during his term of office, and that he shall use no effort to increase his salary by making compensation to any one. I should like to have the same rule apply to justices who have been so much criticised and the subject of so many witticisms in this Convention. I believe that some of the purest and best men in this State occupy the bench by the side of those county judges.

Mr. AXTELL—I move the previous question on this section.

Mr. BECKWITH—I wish to move a reconsideration of the vote taken adopting the word "sixty" in place of "forty," on the motion of the gentleman from Ontario [Mr. Folger].

The immediate consideration of the motion being objected to, it was laid on the table.

The question was put on the motion of Mr. Axtell, and it was declared lost, and the previous question was refused.

Mr. COMSTOCK—I cannot bring my mind to believe that this amendment ought to be adopted. By a vote of the Convention we have just said that we will leave this whole subject to the Legislature. An amendment like this in principle has been proposed in reference to other courts, and has been very decidedly rejected. I am not aware of any reason for inhibiting the Legislature from changing the rate of compensation of county judges by a uniform general law.

The question was put on the amendment of Mr. M. H. Lawrence, and it was declared lost.

Mr. CHESEBRO—I move to strike out in the third line the word "four," and insert the word "six," so that the section will read "one county judge, who shall hold his office six years." I do it in conformity with the system which has been adopted by the Convention with regard to the other courts. I think the term of office as provided in this section, should be at least six years.

Mr. BERGEN—I demand the ayes and noes.

A sufficient number seconding the call the ayes and noes were ordered.

The question was put on the amendment offered by Mr. Chesebro, and it was declared carried by the following vote:

Ayes—Messrs. Alvord, Andrews, Axtell, Baker, Beckwith, Bergen, Bowen, E. Brooks, E.P. Brooks, W. C. Brown, Chesebro, Colahan, Comstock, Corbett, Daly, C. C. Dwight, Farnum, Field, Folger, Fuller, Garvin, Gould, Hadley, Hardenburgh, Hatch, Hitchcock, Ketcham, Kinney, Lapham, A. Lawrence, Livingston, Magee, McDonald, Merritt, Miller, Monell, Opdyke, Potter, President, Prindle, Reynolds, Rumsey, Schell, Seaver, Silvester, Smith, Spencer, S. Townsend, Van Campen, Van Cott, Verplanck—51.

Noes—Messrs. A. F. Allen, N. M. Allen, Archer, Ballard, Bickford, E. A. Brown, Cooke, Eddy, Ely, Fowler, Goodrich, Grant, Graves, Hammond, Hand, Houston, Krum, M. H. Lawrence, Lee, Ludington, Mattice, Merwin, A. J. Parker, Pond, Rathbun, L. W. Russell, Stratton, Wakeman, Wales, Williams—30.

Mr. GRAVES—I move to reconsider the vote on the motion of the gentleman from Onondaga [Mr. Comstock], taking the power from the board of supervisors and giving it to the Legislature, to fix the salary of the county judge, and ask that it lie on the table.

The PRESIDENT—It will lie on the table under the rule.

Mr. LAPHAM offered the following amendment:

Add at the end of the amendment offered by Mr. Chesebro as follows:

"And it shall have such other original jurisdiction as shall from time to time be conferred upon it by the Legislature."

Mr. LAPHAM—It may seem heretical in me to say it, but I believe the Convention of 1846, in taking away from the jurisdiction of the county courts committed a very grave error. The Legislature the very next year after the adoption of that Constitution undertook to confer upon those courts original civil jurisdiction, and that jurisdiction was exercised until, by the decision of the court of last resort, it was determined that the Legislature had no power to confer it. Now, the amendment proposed by my colleague [Mr. Chesebro], which has been adopted, provides that general jurisdiction—original jurisdiction in cases between citizens residing in the county to the amount of a thousand dollars shall be conferred upon those courts. It provides also the cases in which appellate jurisdiction may be conferred upon those courts, but it leaves no power in the Legislature to add cases of original civil jurisdiction. There is a large class of cases involving a mere prosecution of demands for money such as have been referred to by the gentleman from Albany [Mr. A. J. Parker], which, with entire propriety, may be conferred upon those courts. There are cases between suitors only one of whom resides in the county, which may, with entire pre-

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priety, be conferred upon those courts. If I were to have the exercise of my choice and were to abolish either of the two courts, I would abolish the circuit court and make the county court the entire court of civil and original jurisdiction for the trial of causes at nisi prius. But that does not meet the view of the majority of this Convention. The amendment which I propose will enable the Legislature, from time to time, as may be found necessary, to enlarge the jurisdiction of this tribunal, and thus relieve the circuit calendars from the onus which has been thrown upon them by the course taken by the Convention of 1846. There has hardly been a circuit calendar in the State where there has not been an almost ruinous accumulation of causes, compelling suitors from term to term to go and stay a week, two weeks, and sometimes three weeks, and then go home without a trial of their causes.

Mr. BERGEN—I hope this amendment will prevail. The Convention of 1846, especially the legal members of it, were against giving civil jurisdiction to the county courts. In those days, especially in the western part of the State, they were viewed as "one-horse" concerns—as useless, and unworthy of being preserved. Under the Constitution of 1821, they had civil original jurisdiction. They had what we are about conferring upon them now, and, as a member of the Convention of 1846, I, for one, was in favor of continuing that jurisdiction in the county courts. In the county which I, in part, represented, they had always been good courts, and given satisfaction. I rejoice to see, after twenty-one years' experience, that gentlemen have come to the conclusion that the jurisdiction given in the Constitution of 1821 was more correct, operated better and gave more satisfaction than that in the Constitution of 1846, and they are now willing to return to the old system. I hope, therefore, that the amendment will prevail.

The question was then put on the adoption of the amendment offered by Mr. Lapham, and it was declared carried.

Mr. KRUM—I move to strike out of the amendment proposed by the gentleman from Ontario [Mr. Chesebro] that portion of it which leaves the power in the Legislature to limit the right of appeal from the county courts to the supreme court. I have not the amendment before me and cannot state the words, but that is the idea. I think that when we have given the county courts jurisdiction to the amount of a thousand dollars we have done enough, and there should be no restriction to the right of appeal from that court to any other court.

Mr. COMSTOCK—I should like to hear the amendment read, that we may see whether there is any restriction.

Mr. CHESEBRO—There is no restriction. It simply provides that the Legislature may in its wisdom restrict the appeals from the county courts.

The SECRETARY proceeded to read the amendment as follows:

To strike out "and for limiting appeals from the said county courts to the supreme court."

Mr. COMSTOCK—That does not limit the right of appeal from the county courts, except as it gives to the Legislature authority to regulate these appeals, which I am sure is very proper.

Mr. KRUM—It was not thought advisable—

The PRESIDENT—The gentleman having spoken once upon this question, cannot proceed without unanimous consent.

No objection was offered.

Mr. KRUM—I will not trespass upon the attention of the Convention long. It was not thought advisable to leave it discretionary with the Legislature to confer upon the county courts original jurisdiction. It has been deemed advisable, by the vote of this Convention, to confer this original jurisdiction in the Constitution. Now, when this Convention have seen fit to confer that original jurisdiction by the Constitution itself, I think it is not safe to trust the Legislature with the discretionary right of limiting the appeals from those courts; but I insist that when they have the original jurisdiction to the amount of one thousand dollars, the right to appeal from the judgments rendered in that county court should be limited by no power upon earth. Every individual, every suitor, should have the right to appeal from the judgment of this local tribunal.

Mr. LIVINGSTON—Is an amendment in order?

The PRESIDENT—It is.

Mr. LIVINGSTON—I move to strike out the word "limited" and substitute "regulated."

Mr. ANDREWS—As I understand it, there is no right to appeal at all, except by force of some statute; and if this provision were entirely omitted, it would be left to the Legislature to say whether the right of appeal from the judgment rendered in the county courts should or should not exist.

The question was put on the amendment offered by Mr. Livingston, and it was declared lost.

The question was then put on the amendment offered by Mr. Krum, and it was declared carried.

Mr. CHESEBRO—I would like to inquire what the Secretary regards as the amendment of the gentleman from Schoharie [Mr. Krum], what he strikes out?

The SECRETARY—Strike out the words "and for limiting appeals from said county court to the supreme court."

Mr. KRUM—I desire to move a further amendment to the amendment offered by Mr. Chesebro, by striking out "one thousand," and inserting "five hundred."

The question was put on the motion of Mr. Krum, and, on a division, it was declared lost, by a vote of 38 to 43.

There being no further amendment offered to section 18, the SECRETARY proceeded to read section 19 as follows:

SEC. 19. The county judge of any county may preside at courts of sessions or hold county courts in any other county (except the city and county of New York and the county of Kings), when requested thereto by the county judge of said other county.

There being no amendment proposed to section 19, the SECRETARY proceeded to read section 20 as follows:

SEC. 20. The Legislature may, on application

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f the board of supervisors, provide for the elec-
f local officers, not to exceed two in any
to discharge the duties of county judge
surrogate, in cases of their inability or of
and to exercise such other powers in
cases as may be provided by law.

Mr. C. C. DWIGHT—I desire to ask unanimous consent that section 18 may be amended by striking out the sentence, "all surrogates in office when this Constitution shall take effect shall hold their respective offices until the expiration of the terms for which they were respectively elected," for the reason that we have inserted that amendment in section 31, where it is conceded by all that it properly belongs; and it would save the printing of this long sentence when this amended article is printed.

There being no objection, the amendment was made.

There being no amendment offered to section 20, the SECRETARY proceeded to read section 21 as follows:

SEC. 21. The Legislature may reorganize the judicial departments and districts at the first session after the return of every enumeration under this Constitution, in the manner provided for in the — section of sixth article, and at no other time. But the Legislature shall not increase the number of the departments or of the districts.

No amendment was offered to the section.

Mr. SILVESTER—I call up for consideration the motion which I made last evening for the reconsideration of the vote by which the amendment of the gentleman from Ulster [Mr. Hardenburgh] was lost.

Mr. CHESEBRO—I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. HARDENBURGH—I desire to say to the members of the Convention, in regard to the proposition that I had the privilege of submitting as a substitue, that, it being a matter of some importance, I hope the Convention will grant me a reconsideration of that vote, so that we may have a deliberate determination of the question. I have no pride about this thing. I think it is simple and I think it will work well. It has a flexibility about it which I think no other system which has been presented to us has, and I ask the indulgence of the Convention in consenting to a reconsideration of this vote.

Mr. MERRITT—Last night, when this proposition was up, I voted against it. I have given it some consideration since, and I shall vote in favor of it.

The PRESIDENT—The Secretary will read the substitute for the information of the Convention.

The SECRETARY proceeded to read the substitute, as follows:

"The Legislature, at its first session after the adoption of this Constitution, shall provide for the creation and organization of three or more general terms of the supreme court, and provision shall be made by law for designating ten or more of the said justices of the said supreme court who shall hold the same; and also for designating from such number a chief justice for each of said general terms, who shall act as such during his continuance in office. Any three or more of said justices so designated may hold such general terms.

Mr. COMSTOCK—I voted for that proposition last evening, but I have since discovered a weakness in it which induces me to hesitate. It was the purpose of the Judiciary Committee to change the character of these general terms, to have fewer of them than now exist, and therefore the committee proposed to divide the State into departments for the purpose of having four departmental courts instead of eight district courts. The merit claimed for this substitute of my friend from Ulster [Mr. Hardenburgh] is its great elasticity. He tells us and tells us truly, that it may be molded by the Legislature into any thing, and accordingly the language of the proposition is that one or more of these courts may be established; one or more chief judges may be made; and ten or more judges may be assigned. It is so exceedingly elastic that the Legislature may make eight general terms just as we now have, and I am afraid that under it we should get back practically into the precise state of things of which we now complain.

Mr. HARDENBURGH—Mr. President —

The PRESIDENT—The gentleman can only speak by unanimous consent. No objection being made, the gentleman can proceed.

Mr. HARDENBURGH—The objection which the gentleman makes to the section that I offer as a substitute for the section of the committee, has been made to me by two or three gentlemen, and I have thought it over before presenting my amendment. The objection raised by the gentleman from Onondaga [Mr. Comstock] which is the only one I have found raised by any member of this Convention to the proposition I have introduced as a substitute for the eighth section of the majority report, is that it may and does give to the Legislature the power to bring us back precisely to the present system; that under it the Legislature may create eight general terms; and that if the Legislature does see fit to create eight general terms then we will be just where we are now. I think I am able to answer that objection. I admit that under my proposition the Legislature can give us eight general terms, can give us ten, or any number that can be made up from thirty-four judges; and with each general term be manned by three judges, they can give us eleven, and that is the only limit I have given to the Legislature. But I desire to call the attention of this committee to this inquiry: what earthly object would the Legislature have in giving us eight general terms if three can do the business? I was answered by some gentleman with whom I have been in conversation yesterday evening and to-day that the lawyers in the Legislature would desire general terms for their districts and that it would come right back to this system. That is a mistake. The lawyer of every district wants a general term in his district, but it makes no difference to him how many you have, whether you have four general terms or twenty; all he wants is a session of those terms in his district. By the thirteenth section of the article under

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consideration, as reported by the Committee on the Judiciary, it will be found that the Legislature is to determine the time and place of holding these general terms. That is right, and I agree to it. The difficulty that I want to avoid is this: under the department system, although I admit it is better than the present district system, the city of New York, connected as it is with Brooklyn and that section of the State, has no more judges to hold general terms than the fourth or the seventh. Now under the system of the committee you have bound the judges by geographical lines, so far as the general terms are concerned, in a part of the State where they are not wanted. As I said before, I desire them to be under the control of the people, not to be elected by the Legislature, but that the Legislature shall designate, and under the thirteenth section, appoint the time and place where those judges are to hold general terms. If three are sufficient no lawyer will complain, if there is a sufficient number of sessions of that general term within the limit of his travel. No one will ever come to the Legislature and ask for additional general terms. They do not want that. They want a session of that term whether it is three, four or five—

Mr. POND—Can the gentleman [Mr. Hardenburgh] not put a prohibition in his amendment limiting the number of terms to four, if necessary?

Mr. HARDENBURGH—I can, of course, put in a prohibition, but I like to have the system somewhat flexible. The difficulty that I think we have been laboring under in all our troubles here, is that, we do not leave any thing to the servants of the people. I want at least this intermediate stepping-stone under the control of the people themselves. I say, let us have three or more general terms; and if, in the progress of time, it becomes necessary to have another general term, I would like to know what member of this Convention would deny the people the right to have it, or compel them to go through the form of having another Constitutional Convention to obtain it? It is for its flexibility, as I have said over and over again, that I claim for this proposition the favorable consideration of this Convention. You will observe that the system under which we are now living, judges are selected for the districts and there they remain, with no commander to send them where they are wanted. The fourth district does not, of course, want as much local judicial force as the third even, certainly not as much as the second or the first, and I desire—

Mr. FOLGER—Where does the gentleman find, either in the eighth section, or in the law as it exists now, any prohibition upon the Legislature from sending the judges of the eighth district down to New York to hold general term?

Mr. HARDENBURGH—I do not find any.

Mr. FOLGER—And let me ask the gentleman another question. Is the present system not flexible? Cannot the Legislature now move judges from the eighth district, or any other district which has a superabundance of judges, to the first district, or any other district where there is not a superabundance?

Mr. HARDENBURGH—That they may do. But you make your judges departmental, and I question very much whether you can take them from their departments.

Mr. FOLGER—That is just the query which I wish answered. Where does the gentleman find any thing which raises that question?

Mr. HARDENBURGH—I find it really in the question which the gentleman from Ontario [Mr. Folger] puts me. He has raised the question now. If there was no question about it it would not have been asked. I simply say the other objection which I have to it is that you have confined it, and bound it in a straight-jacket by having four general terms. It may be, and I claim that now three will do all the general term business of this State.

Mr. FOLGER—The question I wish to ask is, where is the "straight-jacket?" Where is the language which sews together the straight-jacket? [Laughter.]

Mr. HARDENBURGH—You cannot have more than four general terms under your system.

Mr. FOLGER—I say that you can.

Mr. HARDENBURGH—Under the report of the majority of the committee?

Mr. FOLGER—Yes, sir.

Mr. HARDENBURGH—I will pause a moment and ask the gentleman from Ontario [Mr. Folger] to show me where it can be done. It says a general term shall be held in each department.

Mr. FOLGER—The assertion is made by the gentleman from Ulster [Mr. Hardenburgh] that you cannot change them. I call upon him to tell me where is the language which shows they cannot be changed, and that puts a "straight-jacket" upon the Legislature?

Mr. HARDENBURGH—I have just called upon the gentleman to answer that. You can not have more than four general terms by your proposition and you cannot have less.

Mr. FOLGER—You can have less if you choose.

Mr. HARDENBURGH—I would like to see where you could get less.

Mr. FOLGER—I was asking a question to this point. The gentleman has argued forcibly and at some length that the force of judges of the supreme court ought to be distributable through the State—that they ought to be as an army, as he says, and that the commander, whoever he is, should have the power to dispose of this force, or direct it to a certain place or locality as he saw fit. I say there is nothing in the law as it exists to-day, under our present Constitution, and there is nothing in the report of the Judiciary Committee, which forbids the commander, whoever he may be, from taking his surplus force from one part of the State and applying it to a point where it is needed in another part of the State.

Mr. HARDENBURGH — The distinguished gentleman from Ontario [Mr. Folger] has not answered the proposition that I put to him. I decline to answer his because I do not know but what the gentleman is right—that they may do it. But, however that may be, they do not do it. But he passed from that and asked where there was any more flexibility in my proposition than in his. I say—

Mr. McDONALD—I call the attention of the

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gentleman from Ulster [Mr. Hardenburgh] to the eighth section, where the provision is that "four justices in each department shall be designated to hold general terms." Does that limit them to their holding four general terms?

Mr. HARDENBUGRH—That is what I say. I had approached that subject after I had declined to answer the question of the gentleman from Ontario [Mr. Folger], because I rather think he may be right. They may do it, but they do not do it. We do put the Legislature in a strait-jacket when we provide that they shall have not more than four or not less than four, and it is in that respect alone that my proposition differs from the proposition of the majority report.

The gentleman's time having expired, the gavel fell.

The SECRETARY proceeded to call the roll on the motion of Mr. Silvester to reconsider the vote by which the amendment of Mr. Hardenburgh was lost.

The name of Mr. M. H. Lawrence was called.

Mr. M. H. LAWRENCE—I ask to be excused from voting because I have paired off with Judge Barker.

No objection being made, the gentleman was excused.

The name of Mr. Livingston was called.

Mr. LIVINGSTON—I will vote for the reconsideration, but do not want to be understood as committing myself to vote for the proposition. I vote aye.

The name of Mr. Van Cott was called.

Mr. VAN COTT—I voted against this proposition last evening and Mr. Hale voted for it. I have paired off with him on the question to-day, and therefore ask to be excused from voting.

No objection being made, the gentleman was excused.

The SECRETARY proceeded with and completed the call of the roll, and the motion to reconsider was carried by the following vote:

Ayes—Messrs. Axtell, Ballard, Beadle, Beals, Bell, Bergen, Bickford, Bowen, E. Brooks, E. P. Brooks, W. C. Brown, Case, Chesebro, Colahan, Comstock, Cooke, Corning, Duganne, Eddy, Ferry, Field, Flagler, Fowler, Fuller, Gould, Grant, Graves, Hammond, Hand, Hardenburgh, Hatch, Ketcham, Krum, A. Lawrence, Lee, Livingston, Ludington, Magee, Mattice, McDonald, Merritt, Miller, Monell, Opdyke, Pond, Potter, President, Prindle, Rathbun, Robertson, Rumsey, Schell, Silvester, Smith, Stratton, S. Townsend, Van Campen, Verplanck—58.

Noes—Messrs. A. F. Allen, Alvord, Andrews, Archer, Baker, Beckwith, E. A. Brown, Corbett, Daly, C. C. Dwight, Ely, Farnum, Folger, Garvin, Goodrich, Hadley, Hitchcock, Houston, Kinney, Lapham, Merwin, A. J. Parker, Reynolds, Seaver, Spencer, Wakeman, Wales, Williams—28.

The PRESIDENT—The question now recurs on the adoption of the amendment.

Mr. COMSTOCK—I suppose the eighth section is now under consideration, so that an amendment may be in order.

The PRESIDENT—Amendments generally are in order.

Mr. COMSTOCK—Is an amendment to the eighth section now in order?

The PRESIDENT—An amendment will only be in order to the amendment proposed by the gentleman from Ulster [Mr. Hardenburgh], that being the pending question.

Mr. McDONALD—I move to amend by inserting, instead of the words "organization of three or four or more," as follows: "An organization of not less than three or more than five."

The question was put on the adoption of the amendment of Mr. McDonald, and it was declared lost.

Mr. COMSTOCK—I offer now, as a substitute for the substitute of the gentleman from Ulster [Mr. Hardenburgh] the printed section number 8, with a slight change in it, which I will now propose. After the words "four justices of each department," insert "including the chief justice," so that it shall read, "four justices of each department, including the chief justice." In my provision we designate the chief justice also.

The amendment was read by the SECRETARY as follows:

SEC. 8. Provision shall be made by law for designating, from time to time, the justices who shall hold the general terms, and also for designating from their number a chief justice of each department, who shall act as such during his continuance in office. Four justices in each department, including the chief justice, shall be designated to hold general terms, and three of them shall form a quorum, and the justices so designated may sit at general term in any district, except as the Legislature may otherwise provide. It shall be competent for any one or more of said judges to hold special terms and circuit courts, and to preside in courts of oyer and terminer in any county as the Legislature may by law direct.

Mr. ANDREWS—The Convention, in my judgment, by the vote which has just been taken, has seemed to favor a more radical change in the judiciary system of this State than any that has heretofore been proposed to this Convention. They have not only obliterated the districts and departments, but they have provided, in my judgment, for an entire separation, practically, of the duties of the trial judge from those of the appellate judge. Because, if the view of the mover of the amendment which has been passed shall prevail, it provides that there shall be, within the State, three general terms, composed of three judges each, to do all the appellate business of the State. It is very clear, I think, that the selection of these nine or ten judges from a body of thirty-four judges in the State is, practically, to devote those persons selected simply and solely to general term duty, while it leaves the remainder of the judges to perform solely and alone circuit duty. If this is not so—

Mr. HARDENBURGH—Where does the gentleman find in the proposition that I submitted any thing which will lead him to say there is an absolute divorce of the general term from the circuit?

Mr. ANDREWS—I have not said that the substitute so declares it, but that this will be the practical and necessary result, in my judgment, of the operation of the system.

Mr. HARDENBURGH—Will the gentleman allow me one more question?

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Mr. ANDREWS—Yes, sir.

Mr. HARDENBURGH—Does the gentleman suppose, therefore, or does he assume, or does this Convention assume to itself, to decide that the divorce of the system is better for twenty or thirty years to come than the other plan which has been proposed, or whether or not that it would not be better to take the middle course and let the Legislature or the people decide from time to time?

Mr. ANDREWS—The gentleman from Ulster [Mr. Hardenburgh] does not declare by the amendment he proposes that these two jurisdictions shall be divorced; but I insist upon it that the practical operation of this section is to create just as absolute a divorce between these two different branches of duty as though you so declared in the amendment which has just been proposed. For it will be seen that there will be only nine or ten judges in the State devoted to general term duty. As a matter of necessity, the balance of the judges, for the time being, must be remitted to circuit duty, and it will be impossible that the entire body of judges shall in turn, for any considerable period of time, be able to act as one of the force of nine judges doing general term duty in the State. Moreover, the friends of this present system, whom I have heretofore supposed to have been a majority in this Convention, lose sight, it seems to me, of another thing. Under the present system the districts mean something. In the first place they are electoral districts for the election of judges within their boundaries, and in the next place they are provided for the purpose of organizing eight general terms, from those judges to do duty within the districts. But here there is an entire separation between the judges of a particular district and the general term which may act within that district. In other words, the persons who are to form and constitute the general term are judges outside of the districts in which they are to hold them; as it cannot be possible that, at most, more than one of the judges of each district can form one of the bench of the general term within that district. Now I do not particularly object to this proposition of the gentleman from Ulster [Mr. Hardenburgh]; but it seems to me that if we are to favor the union of these two duties in the judiciary, then we should oppose the proposition of the gentleman. As I have attempted to show, this proposition is, practically and in substance, the same as the one proposed by the gentleman from Chenango [Mr. Prindle]. If we desire to preserve the districts as district, and the action of the judiciary within the districts as district, then the proposition should be opposed, because it provides that persons holding the general terms shall be, of necessity, persons who are not judges of the district where the general term may be held. Will the gentleman say that general terms can be held in all the districts as now, although there are but three branches of the general term? As we all know there is, practically, only a portion of the year in which general terms can be held at all. During the summer months and during other parts of the year, duty of this kind is practically suspended, so that there are scarcely to exceed six months in the year in which general term duty can be performed and benches of the general term held. Now, let us see. There are, in the eight districts, at least thirty-two general terms held in each year and these, if they are held a single week at a time, will consume thirty-four weeks. But, for the purpose of doing this duty, instead of the number of the benches at general term we now have, the three benches will have to do it entirely, and it will be impossible, in my judgment, to give effect to the suggestion of the gentleman from Ulster [Mr. Hardenburgh], that these general terms can be held as now conveniently within each district of the State.

Mr. HARDENBURGH—How many does the Judiciary Committee organize in their scheme—only four?

Mr. ANDREWS—Yes.

Mr. HARDENBURGH—And the gentleman thinks that four can certainly do it, but doubts whether three can?

Mr. ANDREWS—I think that four is the least number that can do that work in this State.

Mr. HARDENBURGH—Then I will get rid of all that argument by accepting four in my proposition.

Mr. ANDREWS—Then it is the proposition of the Judiciary Committee in their report, but the committee preserve the identity of the departments by organizing in each of the departments a general term; whereas the proposition of the gentleman from Ulster [Mr. Hardenburgh] ignores that division and separation.

Mr. HARDENBURGH—I have yet to learn a reason for it.

Mr. BALLARD—If I understand the effect of the section adopted—section 8—while it organizes four departments, it yet does not dispense with the judges sitting in each of the districts as now organized. Now, the difficulty with the amendment proposed by the gentleman from Ulster [Mr. Hardenburgh] is the one that has been so well stated by the gentleman from Onondaga [Mr. Andrews]. The amendments subsequently proposed by the gentleman from Onondaga [Mr. Comstock] is that four justices in each department, including the chief justice, shall be designated to hold the general term. Now, as I understand the effect of that, it is to confine the system to four general terms only, for the reason that there will be but four presiding justices.

Mr. COMSTOCK—That is the object

Mr. BALLARD—Then that strikes directly at this feature of the system which requires and allows a general term to be held in each district.

Mr. COMSTOCK—Oh, not at all. There are to be four and only four courts in banc, but they may, and by the thirteenth section they are required to sit in each district of the State. My proposition only goes to the constitution of the court in banc, not at all to the place where it sits.

Mr. BALLARD—Then this chief judge—

Mr. COMSTOCK—He is to go with his court and hold courts in banc in the different districts, as by law provided.

Mr. BALLARD—That, then, is the question, whether the Convention is prepared to adopt that system as applied to our supreme court. This one bench must visit the eight judicial districts of the

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State with the same presiding judge in every one of the districts.

Mr. COMSTOCK—Under our former judicial system we had but one supreme court, but it sat in different places holding courts at different times and at convenient points designated by law; but by the rapid growth of the commerce and business of the State, it has become impossible for one supreme court to do all the business, and it was proposed that there should be a division into four courts in banc, with a chief justice in each. I do not know how it may be with others, but it has been my steady purpose to exclude from the system we are now creating these six or eight district courts which we now have. I admit and declare that that was my object, and the object of the Judiciary Committee, if it had any definite purpose in creating these departments. Now, my objection to the plan of the gentleman from Ulster [Mr. Hardenburgh] is its exceeding elasticity, under which the Legislature may remit us to the same district courts which we had under the Constitution of 1846. It has seemed to me wiser, and I suppose that was the idea of the Judiciary Committee, to have four departments in the State, with a chief justice in each, and a court organized for each out of the whole bench of the judges of the State, constituting only four courts in banc within the supreme court, but requiring them by law to hold their sessions wherever convenience should require. That has been my idea of the system we are trying to create, and therefore I offered this amendment, to which I call the attention of the Convention, in order that that idea may be more and more, and with less and less ambiguity, fixed in the system which we are about to establish.

Mr DALY—My experience upon this subject has been the same as that of the gentleman from Onondaga [Mr. Comstock]. The first impression which I received from the proposition of the gentleman from Ulster [Mr. Hardenburgh] was favorable, but the subsequent consideration of it satisfied me that it would destroy the whole system which has been proposed by the committee and acted upon by the Convention. I called the attention of the Convention some days ago to the fact that nothing received, in the Convention of 1846, more general approval, as an existing necessity, than the territorial division of the supreme court; and that, in its practical operation, so far as the inquiries of the committee extended, nothing had been more satisfactory. The Judiciary Committee had seventeen plans proposed to them, and out of those seventeen plans they constructed what they regarded as a symmetrical system of judiciary for the State—a system in accordance with the fundamental principles upon which the Convention of 1846 acted, and in accordance with the division into districts and departments in other States of the Union. Now, the proposition of the gentleman from Ulster [Mr. Hardenburgh] is to break up this symmetrical division and leave it entirely to the Legislature to determine what general terms beyond three in number shall exist, where they shall be located, and how they shall act. In other words it is taking the control of the symmetry of the system out of the hands of the Convention and giving it into the hands of the Legislature. So far as the elasticity and flexibility of it is concerned it will certainly be flexible enough in that respect; but I apprehend, as the gentleman from Onondaga [Mr. Comstock] has apprehended, that the practical working of this system would bring it back to the permanent general term sitting in banc, composed of judges distinct from the circuit judges; and I wish to say, as I said before, that, after twenty-one years' experience of a plan which had never been tried before, a plan which does not now exist in any other State of the Union, or in any other country where there is a system of jurisprudence, the plan of having one body of judges act as circuit judges, and another body of judges to review their decisions in banc, the public sentiment of this State was unanimous for its abolition. I say unanimous, because no gentleman in the Convention of 1846 referred to it (and it was referred to by many) without giving expression to the general judgment of the people that the system was a failure, and should be abolished. I apprehend that the practical operation of the plan proposed by the gentleman from Ulster [Mr. Hardenburgh] would be the same, and now at the close of this session, after the Judiciary Committee have been for nearly two months engaged in the laborious investigation of this subject, after the elaborate discussions on the subject that have taken place upon this floor, I call upon this Convention to hesitate and not to hastily discard this plan for the mere suggestion of the gentleman from Ulster. I make the remark with the highest regard for the gentleman and for his experience and ability, but I call upon the Convention not to reject the plan of the committee for his plan without giving the subject that full and deliberate consideration which so important a change should receive.

Mr. HARDENBURGH—I am a little sorry that the members of this committee are so sensitive on the idea that any one should suggest a thought upon this subject, in even the remotest degree, differing from their own. Now, my friend from New York [Mr. Daly] says that his experience of twenty-one years has taught him the effect of a system of this kind—

Mr. DALY—I beg to correct the gentleman. I said that the experience of the people of this State for twenty-one years had taught them that the system was a failure.

Mr. HARDENBURGH—Then I beg to call to the gentleman's memory the fact that he said the other day that there was only a page and a half of the debates of the Convention of 1846 devoted to this subject.

Mr. DALY—I beg leave again to correct the gentleman. I stated that there were only two pages of those debates devoted to the subject of the judicial tenure of office, but there are nearly three hundred pages of the debates on the general question of the organization of the judiciary.

Mr. HARDENBURGH—I wish to say to the members of the Convention that the scheme I propose differs in no way or degree from the scheme of the committee, except in relation to its flexibility. If gentlemen think it is too flexible, I will put in it, if it will suit them better, that there shall not be less than three nor more than

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four. It is not on that point that I differ with my friends. I want to know where we are to stop here in curtailing the powers of the Legislature. If you are going to construct your courts entirely here, you had better make your decisions here also. Give the people material out of which they are to construct the courts, constantly keeping in view the division of our government into three grand departments, the legislative, the executive, and the judicial, and then I think you have done your duty in the matter. But instead of that, you sit here, hedging around and hemming in the Legislature, as if you were the people themselves. I have found fault with that spirit in this Convention before. I find fault with it now. I tell you, you should give to the people a college of thirty-four judges, and then say to them in plain Saxon, "out of this college of judges—out of this judicial force you can select ten or more to form three or more general terms, to do the business of the State." When you have done this you have done your duty. That is the idea I am after. I do not want to bind up the people in a straight-jacket for twenty years, with only four general terms. Now, my friend from New York [Mr. Daly] says that the Judiciary Committee labored for two months upon this plan. That committee was a large one, composed, I may say, of the talent of this Convention. They divided the State into four departments, and they came in here with this avowed object—my friend from Onondaga [Mr. Andrews] declared that to be their object—to have a larger area out of which they could select the judges; and yet, in the very article which they submitted, they said that four judges should live in the district in which I live! That is what the committee did after two months of deliberation. They did that at the suggestion of somebody, I suppose, and I find no fault with it; and I do not interfere with their department scheme. But what is there left of it? There is nothing but a name and a shadow left of that scheme since the adoption of this report. In the report, there is provision for four departments; but now there is nothing left of that departmental scheme except the name. My friend from Onondaga [Mr. Andrews] says that my system practically makes a divorce, as the amendment of the gentleman from Chenango [Mr. Prindle] sought to do, between the circuit and the general term. It is not so, sir. I steered directly between the two rocks, upon which, in my opinion, those other propositions split. I say I will leave that question to the people. If they select and designate the judges who are to hold these general terms, and the system works well, the people will keep it so; but if they finally conclude that it is better to interchange between circuit and general terms, why then the people can provide for their doing it; and I submit that it is not our business here to fix a stubborn, unchangeable rule, so that the people will have to go to the trouble of calling another Convention to alter it. I trust the people upon this subject; and if you put the plain proposition to them, I have no doubt they will agree with it.

Mr. WAKEMAN—This subject has been talked about more or less for two weeks. Various plans have been proposed, a plan by the gentleman from Chenango [Mr. Prindle], one by the gentleman from Ulster [Mr. Hardenburgh], one by the gentleman from Essex [Mr. Hale], and another by another gentleman in the Convention; and of all the plans proposed, I believe, the last one is the worst. All these several propositions except the last, have been voted down. Now, let us look back and see where we started from. I ask gentlemen here, whether the people of this State have complained of the present arrangement of the courts, and so far as the business of the courts is concerned?—whether it has not been convenient for every portion of the State and entirely satisfactory to the people? To be sure they have complained of one point—the multiplicity of the general terms and the consequent conflict of decisions. What have the committee sought to do? They have combined two districts in one and required the judges of the department to hold general terms in the districts as they now exist, the chief justice to be chief justice in both, so as to diminish the chances of conflicting decisions by one half. The proposition of the gentleman from Ulster [Mr. Hardenburgh] sweeps entirely away the whole of the system that has been adopted heretofore by this Convention. Are we prepared to do this when it is evident that the people of the State are wholly satisfied with the present system, if the conflict of decisions can be done away with, and if judges can be prevented from sitting in review of their own decisions?

Mr. HARDENBURGH—Will the gentleman allow me to ask him a question?

Mr. WAKEMAN—Certainly.

Mr. HARDENBURGH—What does my proposition sweep away? Your object is to get fewer general terms. Well, I make fewer than the report of the committee does. I do not see what it is that I sweep away.

Mr. WAKEMAN—In my judgment, the conflict of opinions under the gentleman's plan would be much worse than it is now. Under the plan of the committee we shall have something settled in the decisions of the courts—something, at least, that may be regarded as settled until the court of appeals shall have overruled it; but if you allow the courts to perambulate through the State, you will have nothing settled in any department whatever. As I understand the proposition, these courts are to designate who shall hold the circuits; and it is said that every justice may be designated to hold circuits. Very likely. But can you adopt a system by which every justice shall have his turn in the general term, as under the proposition reported by the committee? If it is important and right that the justice who sits at general term shall also hold the circuits, why not establish the principle here, to make it certain? Otherwise, I much prefer the plan of the gentleman from Chenango [Mr. Prindle], divorcing entirely the general terms and the circuits. Now, inasmuch as we have voted down all the other propositions so far, and have adhered all the way through to the system, substantially, as reported by the committee, it seems to me that, to pass this proposition would be, at this late hour in our session, to undo all that we have done, and I really hope it will not prevail, because I am entirely satisfied with the system as

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it now exists, and the people of the State are well satisfied with it. The next best thing, or perhaps better still, is the department system reported by the committee, and I hope we shall consider well before we adopt any other.

Mr. MERRITT—I move the previous question.

The PRESIDENT—To what extent?

Mr. MERRITT—On the whole proposition.

The question was put on the motion of Mr. Merritt, and it was declared carried.

Mr. C. C. DWIGHT—I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY proceeded to call the roll.

The name of Mr. A. F. Allen was called.

Mr. A. F. ALLEN—I have paired off with Mr. Flagler on this question.

The SECRETARY completed the call of the roll.

Mr. HARDENBURGH—I desire to call the attention of the President to the fact—

The PRESIDENT—The result of the vote has not been announced.

Mr. HARDENBURGH—I know that; but I want to know whether any vote can change the result when the question has been decided before?

Mr. FOLGER—It is too late to raise that point.

Mr. HARDENBURGH—I raised the point before —

Mr. FOLGER—Mr. President, is this discussion in order under the operation of the previous question?

The PRESIDENT—It is not.

Mr. SILVESTER—Is it too late to raise a point of order?

The PRESIDENT—It is too late after the vote has been taken.

Mr. C. C. DWIGHT—I would like to have the name of Mr. Frank called again. [Laughter.]

The SECRETARY called the name of Mr. Frank, but he did not respond.

Mr. SEAVER—I rise to a question of privilege. The rule of this Convention requires that every member within the bar of the house when his name is called shall vote. I desire that the name of Mr. Frank be called again.

The PRESIDENT—The question of privilege is well taken. The Secretary will call the name of Mr. Frank again.

Mr. ALVORD—I rise to a question of privilege. I move that Mr. Frank be excused from voting.

Mr. MILLER—I would suggest that it is understood that Mr. Frank has a scriptural excuse. [Laughter.]

The question was put on excusing Mr. Frank from voting, and it was decided in the affirmative.

The substitute offered by Mr. Comstock was declared adopted by the following vote:

Ayes—Messrs. N. M. Allen, Alvord, Andrews, Archer, Baker, Ballard, Beadle, Beckwith, Bergen, Bickford, E. Brooks, E. P. Brooks, E. A. Brown, Comstock, Corbett, Daly, C. C. Dwight, Eddy, Farnum, Folger, Garvin, Goodrich, Hadley, Hitchcock, Houston, Kinney, Lapham, A. Lawrence, Livingston, Merwin, Monell, A. J. Parker, C. E. Parker, President, Reynolds, Robertson, Seaver, Spencer, Stratton, Van Campen, Wakeman, Wales, Williams—43.

Noes—Messrs. Axtell, Beals, Bell, Bowen, W. C. Brown, Case, Chesebro, Cooke, Corning, Duganne, Ferry, Field, Fowler, Fuller, Gould, Grant, Graves, Hammond, Hand, Hardenburgh, Hatch, Ketcham, Krum, Lee, Ludington, Magee, Mattice, McDonald, Merritt, Miller, Opdyke, Pond, Prindle, Rathbun, Rumsey Schell, Silvester, Smith, S. Townsend, Verplanck—40.

Mr. SILVESTER—I move to reconsider the vote which has just been taken.

The PRESIDENT—That motion will be received and laid on the table under the rule.

Mr. RUMSEY—I move that this Convention do now adjourn.

The question was put on the motion of Mr. Rumsey, and, on a division, it was declared lost by a vote of 40 to 48.

Mr. WALES—I move the previous question on the adoption of the article.

Mr. FOLGER—Does the gentleman mean on the section or on the article?

Mr. WALES—On the article.

Mr. FOLGER—I hope the gentleman will withdraw his motion. There are other amendments yet to be offered.

Mr. WALES—I withdraw it.

Mr. FOLGER—I am requested by an absent delegate to offer the following amendment, as a separate section:

"That the courts of special sessions shall have such jurisdiction of offenses, of the grade of misdemeanor, as may be prescribed by law."

Mr. A. J. PARKER—I wish to offer an additional section. It is the section which was number 10 of the present Constitution. "The testimony in equity cases shall be taken in like manner as in cases at law." I deem it very important that this provision shall be retained in the Constitution. The Constitution of 1846 united the administration of law and equity in the same tribunal. It accomplished it, first, by abolishing the court of chancery and committing both to one court, and secondly, by this provision, that the testimony should be taken in equity cases in like manner as in cases at law—that is to say, that the witnesses should be examined before the tribunal that has to decide the case, instead of the testimony being taken before an examiner, as was the practice in the court of chancery. I do not know what objection there can be to this provision, and I trust there will be none made, because it is a very important provision.

Mr. DALY—There is no objection, I think, to inserting that provision in the Constitution. The reason that the committee omitted it was the fact that, under our law, the system has become so thoroughly established that it was not thought necessary to insert a provision for it here. Our statutes provide so effectually for this that the committee thought it unnecessary to provide for it in the Constitution.

Mr. A. J. PARKER—But those statutes may be repealed.

Mr. HARDENBURGH—I wish to ask the

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gentleman from Albany [Mr. A. J. Parker] if we are to put into this Constitution every thing that the Legislature can possibly touch? Suppose they do repeal those statutes? They can re-enact them if it is best that they should be re-enacted. This idea of putting every thing into the Constitution is utterly erroneous. The power lies in the people and in their representatives in the Legislature, and all we can do is to restrain and regulate the exercise of that power.

The question was put on the amendment of Mr. A. J. Parker, and, on a division, there were ayes 49, noes 26; no quorum voting.

Mr. RUMSEY—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Rumsey, and it was declared carried.

So the Convention adjourned.

FRIDAY, December 20, 1867.

The Convention met at ten o'clock pursuant to adjournment, Mr. FOLGER, President *pro tem.*, in the chair.

Prayer was offered by the Rev. Dr. SPRAGUE.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. HAND—I present a memorial from over forty citizens of Owego, asking for the establishment of a board of medical examiners.

Which was laid on the table until the appointment of a select committee.

Mr. BELL—I ask that the resolution of Mr. Murphy, calling for a reconsideration of the vote by which the place for holding the future sessions of the Convention was fixed at Troy, be taken from the table.

The PRESIDENT *pro tem.*—The Chair is of opinion that the motion would more properly come under the head of resolutions.

Mr. BELL—I will defer to the decision of the Chair.

Mr. KINNEY—I offer the following resolution:

The SECRETARY read the resolution as follows:

Resolved, That the Postmaster of this Convention be directed to forward to the members any mail matter which may arrive during the recess.

The question was put on the resolution of Mr. Kinney, and it was declared adopted.

Mr. BELL—I now move to take from the table the resolution of Mr. Murphy, to reconsider the vote by which the place of our future meetings was fixed at Troy. I ask for the reading of the report of the committee which visited that place.

The SECRETARY read the report as requested.

Mr. E. BROOKS—In order that this Convention may not appear to vacillate like the waves of the sea, and undo to-day what it did yesterday, and to test its determination to be consistent in its action, I move that the motion to reconsider lie upon the table.

Mr. BELL—I hope the gentleman will withdraw his motion for a moment. I simply want the Convention to understand the accommodations we will have at Troy. I called for the reading of the report that we could understand the size of the room.

Mr. E. BROOKS—I would rather not withdraw, under the circumstances.

Mr. BELL—I am sorry the gentleman will not withdraw and allow us a fair description of the room.

Mr. E. BROOKS—We have had a report from the committee which has given us the exact dimensions of the room at Troy and the dimensions of the room at the City Hall, and all the information we can possibly obtain. I move to lay the report upon the table.

Mr. BELL—Upon that motion I call for the ayes and noes.

A sufficient number seconding the call the ayes and noes were ordered.

The question was put upon the motion of Mr. E. Brooks, and it was declared lost by the following vote:

Ayes—Messrs. Alvord, Andrews, Archer, Armstrong, Beckwith, Bowen, E. Brooks, W. C. Brown, Comstock, Cooke, Corbett, Curtis, C. C. Dwight, Eddy, Farnum, Ferry, Field, Flagler, Fowler, Francis, Goodrich, Hammond, Hitchcock, Ketcham, Landon, A. Lawrence, Ludington, Magee, McDonald, Merwin, Miller, More, Opdyke, Prindle, Prosser, Roy, Rumsey, L. W. Russell, M. I. Townsend, S. Townsend, Van Cott, Verplanck, Wales, Williams, Young—46.

Noes—Messrs. A. F. Allen, Axtell, Baker, Ballard, Barto, Beadle, Beals, Bell, Bergen, Bickford, E. P. Brooks, E. A. Brown, Case, Chesebro, Corning, Daly, Ely, Folger, Frank, Fuller, Garvin, Gould, Grant, Graves, Hadley, Hand, Hardenburgh, Harris, Hatch, Houston, Kinney, Lapham, M. H. Lawrence, Lee, Mattice, Merritt, Monell, A. J. Parker, C. E. Parker, Potter, Rathbun, Reynolds, Robertson, Schell, Seaver, Silvester, Smith, Spencer, Stratton, Van Campen, Wakeman, Weed—52.

The question recurred on the motion of Mr. Bell to reconsider so much of the vote on the resolution of Mr. Murphy as fixed the place for the future meetings of the Convention at Troy.

Mr. BELL—I move this reconsideration because I think the action yesterday was hasty and inconsiderate; that we did not thoroughly consider the report of the committee; neither had we taken all the circumstances attending our removal into consideration. Several of the members of this Convention visited Troy yesterday afternoon; and, as far as I can learn, they were entirely disappointed in the accommodations offered by the municipal authorities of that city. For that reason, I called for the reading of the report. It will be observed that the report only gives the superficial feet of the floor of the room. It does not state that the room is up two or three flights of stairs; it does not state that it is very badly lighted, the windows being small, and only on one side, those in the opposite direction being shut up by a building that has since been built. It does not state that it is entirely defective in ventilation; it does not state that it is an entirely unsuitable room for a deliberative body. I say, from personal inspection, that it does not afford any thing like the comfort and accommodations that are afforded by the common council chamber in

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the City Hall of Albany. If it did not occupy the time of the Convention I would like to call for the reading of the report of the committee with regard to the common council chamber of this city. Taking all these things into consideration, it is wise that this body, notwithstanding the criticism of the gentleman from Richmond [Mr. E. Brooks], to reconsider any hasty or ill advised action. I take it that it is as fair for a body of gentlemen, as for an individual, to recede as soon as possible from any inconsiderate or wrong action. The sooner we retrace our steps in this respect the better it will be for us. I hope this resolution fixing the place of meeting at Troy will be reconsidered, and that the common council chamber in Albany will be fixed upon as the place for our future meetings. I hope this for various reasons. I will not consume our time by going over the whole field of this matter now. But I would have been very glad had every member of this Convention visited the rooms offered for our use by each city and decided for himself. I have heard it stated that certain gentlemen of this Convention were influenced in their votes on account of the contact that might take place between the members of the Legislature and the members of this Convention. I cannot see that this consideration has any weight whatever. I assume that every member of this Convention is capable of taking care of himself; and that he certainly will not be contaminated by contact with the members of the Legislature. I think I speak understandingly when I say that these bodies can properly, and without unduly influencing one another, assemble in this city and conduct their respective businesses. There is no reason for apprehending any undue influence of this kind. Neither do I apprehend that any gentleman in this Convention will lower the dignity of his position, or his self respect by becoming a lobbyist in the Legislature. I think this is an argument that has no force whatever. There are some very potent arguments in favor of remaining in this city in addition to the accommodations that are here afforded us, and the fact of this being the proper place for our sessions. We have found that it has been very difficult to secure and retain a quorum. I hope the vote of yesterday will be reconsidered. It will be observed that I have only called for the reconsideration of so much of the report as relates to the place of meeting, leaving the time of adjournment, and the time for re-assembling as it was agreed upon yesterday. I would simply change the resolution by substituting the city of Albany for the city of Troy.

Mr. MERRITT—I think it is due to my position as chairman of the committee which has made the report on this subject, and also to the statement I made to the gentleman from Rensselaer [Mr. Francis] yesterday, to make a few remarks. I presumed the vote taken yesterday would be final. I said I would not oppose any further movement toward holding our future meetings in Troy. I wish to reiterate so much of what I said yesterday, to the effect that I visited the council chamber in company with the committee who visited New York. I stated to the committee that if the room at the City Hall was not sufficiently capacious, there was a room at the corner of Eagle and Hudson streets, nearly as convenient as the City Hall, with an area of one hundred and twenty by sixty feet, in the State arsenal building, well lighted, and in the second story of the building. It is a plain room, with ample gas fixtures and a first-rate system of ventilation. The room, I am authorized to say, will be at the disposal of the Convention. On the second floor of the building are several rooms fitted up as company rooms, which would be convenient for the post-office, for committee rooms and for the use of the stenographer and his assistants. The majority of the committee having decided that the common council chamber would answer every purpose, did not desire to visit any other rooms. Perhaps I ought to apologize to the gentleman from Rensselaer [Mr. Francis] for my statement yesterday, that I would not vote in favor of a reconsideration. After reflection, however, I shall feel compelled to vote for a reconsideration.

Mr. BEADLE—I believe this Convention labored yesterday under a misapprehension with regard to the report of the committee in relation to the city of Troy. I was glad to hear the gentleman from Jefferson [Mr. Bell] call for the reading of that report. I desire to call the attention of the Convention to the fact that no recommendation is contained in that report in favor of Troy or any other locality. Yesterday afternoon several members of the Convention stated that they were under the impression that the committee recommended Troy as a proper and suitable place for the holding of the future deliberations of this Convention. Being cut off yesterday morning by the moving of the previous question, I desire now to say, as a member of the committee, that I did not join in the support of the amendment of the gentleman from Niagara [Mr. Flagler]. In consultation with that committee it was agreed that the resolution should be offered, and that I should offer an amendment substituting Albany for Troy. I visited Troy with the committee the day before yesterday. When I saw the hall which it was proposed we should occupy, I felt assured, if this Convention went to that city, they would be entirely dissatisfied with their accommodations. The simple statement of the area of a room gives no adequate idea of its accommodations. The room in question in Troy is thirty-six by eighty feet, in dimensions; the height of ceiling at the highest point is twenty-three feet, with no possible means of ventilation. It was built, as I understand, with the intention of being occupied for evening lectures. It is lighted by gas, having three chandeliers pendent from the ceiling. The center room, I understand, has six burners. These are the accommodations for light, with the exception of four windows, not very large, upon one end. It would not be possible for gentlemen to read in the room as it is at present arranged. It will do very well for lectures, but it is entirely unsuited for the business of this Convention. The committee were met by a delegation from the authorities of the city of Troy, who received us very cordially: they showed us this room, and said it would be arranged in any manner desired

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by the Convention. That was a wholesale phrase; but I understood from one of the gentlemen who escorted us that it was rather expected we should occupy the seats already in the room. These seats were such as are usually seen in such places. I think they are not such as would give satisfaction to this Convention Not supposing it would be seriously contemplated that the Convention should occupy that hall, I visited no other public hall, as several of the committee did. In company with some twenty odd members of this Convention, I again visited Troy yesterday with a view to making arrangements for rooms and board. I went to what is said to be the best hotel in Troy, and asked the keeper of it what accommodations he could give, and how many members of the Convention he could accommodate. He replied that he thought he could accommodate twelve. Seeing I looked rather blank —"Well," said he, "possibly fifteen." [Laughter.] Said he, by way of explanation, "You will understand, gentlemen, I have my transient custom and travelers to attend to first." "Certainly," said I, "we come here second best." I did not go to any of the other hotels; but I understand their accommodations are not adequate for the comfort of one hundred and sixty or two hundred persons. They are not prepared for the accommodation of large bodies, such as usually assemble in this city, and for which this city is prepared. I desire, by these remarks, to put myself right before this Convention as a member of the committee.

Mr. CHESEBRO—I move the previous question.

The question was put upon the motion of Mr. Chesebro and it was declared lost.

Mr. M. I. TOWNSEND—Gentlemen of this Convention will bear me witness that I have neither in public nor in private, solicited this Convention, individually or collectively, to go to Troy. I have left the gentlemen of the Convention to form their own conclusions in their own way. They will also bear me witness that, neither in public nor in private have I said one word against the existing accommodations in Albany. I have nothing to find fault with; therefore I am not partisan upon this subject. Nor do I wish to say any thing with the design of inducing this Convention either to adhere to or change the vote of yesterday. As a citizen of Troy, I find some gentlemen, at least, forgetting the facts connected with the place to which this Convention was invited, therefore I wish to make this statement. The hall which it was proposed to furnish for the accomodation of this Convention has four good windows in front, adapted to the size of the room, which is thirty-six feet in breadth and twenty-three feet high. They give as much light as any architect would calculate to throw into such a room by four windows built for that purpose. These windows are at the west end of the room. Upon the south side of this room are two staircases from the second story; this room is on the third story. The staircase from the first story to the second is fifteen feet in width. There is a window opening into the room on the south side. At the east end of the room is an apartment sixty by seventy feet—the exact dimensions are stated in the report of the committee. In that room are three large windows now covered up, as they have been for a number of years. These open into the large room, which has, in addition, a skylight.

Mr. EDDY—I visited the room yesterday with the janitor, who stated to us that the windows were false; that a brick partition was on the other side of them, and that they could not be opened without taking down that partition.

Mr. M. I. TOWNSEND—How that is I am unable to say; but the windows are covered with cloth; I did not understand that they were bricked up. If they are it is simply for temporary purposes. It was proposed by the committee of the common council that these three windows should be opened, so that the light and air would be admitted.

Mr. BELL—I made particular inquiry in regard to these windows, and was informed that they were bricked up.

Mr. M. I. TOWNSEND—Of whom did the gentleman inquire?

Mr. BELL—Of the persons there: I do not know who they were. But even if that wall could be taken down, we were informed the windows opened into another room, and not to the light of heaven.

Mr. M. I. TOWNSEND—If my friend from Jefferson [Mr. Bell] had been as ready to receive favorable as he was yesterday to receive unfavorable information he would have noticed that I said that these windows opened into a room sixty by eighty feet, with a large skylight.

Mr. BELL—The only difficulty is that these windows do not open into a room: that they are bricked up, and this I am informed from the investigation of the chairman of the committee.

Mr. M. I. TOWNSEND—I wish to say—

Mr. ANDREWS—Will the gentleman from Renesselaer [Mr. M. I. Townsend] allow me to state that Mayor Flagg informed me, yesterday, that the windows were temporarily bricked up and could be opened.

Mr. BELL—Mr. President—

Mr. M. I. TOWNSEND—I hope my friend from Jefferson [Mr. Bell] will listen to me with patience, because I, for one, am entirely willing that he should vote in any direction upon this subject that his judgment shall dictate; but I wish to vindicate the action of the common council and the public authorities of the city of Troy, and to show that they did not ask this Convention to go up and sit where they would be deprived of all the light that certainly is necessary for the Convention to transact business. Whether these were bricked up or not, it was stated to the committee themselves, in the hall, that these windows would be opened so that there would be eight windows throwing their light into this room. I wish to state further that there never has been a thought on the part of the authorities of that city, at any moment, to confine the members of this Convention to the benches that are now in that hall, which are very good benches for sitting to hear a lecture, but are entirely unsuited for the Con-

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vention; that arrangements are already made for fitting that hall with the necessary desks, made according to the Trojan notion of meeting the wants of gentlemen who come to transact such business as we transact in this Convention; that arrangements are already in progress for putting desks in that hall, and, I presume, as good desks as the Convention could wish. Now I have put myself right I think, so far as the common council of Troy is concerned; that is, that we have offered a hall that can be abundantly lighted by the light of heaven; that we have offered a hall that is large enough to accommodate this Convention if they choose to honor us with their presence; that we have proposed to give them such accommodations as would be suitable for gentlemen engaged in the transaction of business, so far as the transaction of business is concerned. We are humble people up at Troy, living in an humble way; but I have no doubt if the members of this Convention go there, they can be furnished with as good accommodations as an humble people engaged in manufactures and industrial pursuits can supply. They are adequate for their own accommodations, and just such as we have will, undoubtedly, be furnished to the members of the Convention.

Mr. HAND—Those eight windows and sky-light, I understand, open into an adjoining room, and do not light the room in which it is proposed that the Convention shall sit.

Mr. M. I. TOWNSEND—Four windows open to the light of heaven in front; one opens to the outer world on the south; and three windows on the east open into the room that is lighted by a sky-light, and that room is to be at the service of this Convention.

Mr. HAND—Will the light from the sky-light come in through the door?

Mr. M. I. TOWNSEND—I think my friend from Broome [Mr. Hand] has about the same idea of Troy and Troy accommodations as several other gentleman have got, that the light that comes through the sky-light has got to go through the door before it can get into the next room. My simple appreciation is, that the light from heaven through the sky-light comes right down into the room, and as it comes down into the room, if there are windows there, and there are three windows leading into the room where it is proposed to have the Convention meet, that light will not be so fastidious as to go around through the door when it can come in through the windows. The light in Troy diffuses itself evenly in every direction. [Laughter.] Those windows are only temporary and used in connection with the association when they had a picture gallery in this adjoining room which is proposed to be put at the service of the Convention. In addition to that, I ought to state that, on the south side of this hall is another room—an adjacent room, sixty by seventy feet, lighted by this sky-light, put at the service of the Convention and proposed to be lighted and furnished with all the accommodations necessary; that there is another room offered to the Convention twenty feet square, on the south side, on the same story; that there are two large and well furnished rooms on the story below that were offered for the use of the Convention. So that there is the large room, the adjacent room sixty by seventy feet, lighted by this sky-light, and then there are two rooms upon the floor below, all offered for the use of this Convention, with the proposition to furnish as good desks as the taste of the people of our city supposes the Convention would desire for their use in the transaction of this business. I have said what I have to say in regard to the hall. If the Convention see fit to go there, our people will carry out, I have no doubt, this preparation for the accommodation of the Convention, in good faith and in a way to justify a respectable standing in the eyes of the people of the State, so far as their conduct toward public bodies is concerned.

Mr. ALVORD—I have no sort of question but what the mind of every member of this Convention now present is made up upon this question. I, for one, have no sort of feeling whether we meet in Troy or in Albany; only I desire to be consistent with my action here, and bring this matter to a vote. I think we have had discussion enough on it; it is not profitable; it will not change the mind of a single individual. I, therefore, move the previous question.

The question was put on the motion of Mr. Alvord, and it was declared carried.

The PRESIDENT *pro tem.* announced the question to be on the motion of Mr. Bell to reconsider.

Mr. BELL—I demand the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY proceeded to call the roll on the motion of Mr. Bell to reconsider.

The name of Mr. Francis was called.

Mr. FRANCIS—I ask to be excused from voting for the reason that I supposed the question was settled by the vote of yesterday. It is generally understood in our city that it was settled by that vote, and some active measures have already been taken for carrying out the object of the resolution passed yesterday. And as the question involves, to some extent, as may be construed, self-interest, I cannot consistently, with my own views of justice, give a vote at all upon the question.

The question was put on excusing Mr. Francis, and it was declared carried.

The name of Mr. Ketcham was called.

Mr. KETCHUM—I desire to be excused from voting. I suppose the principal object of changing our position and our votes as often as we have during the session of of this Convention, undoing one day what we did the day before, is to satisfy our constituents. I suppose that is the principal object of this movement. I am satisfied that my constituents will not be troubled on that matter. I do not think I should be required to vote.

The question was put on excusing Mr. Ketcham, and it was declared carried.

The name of Mr. Krum was called.

Mr. KRUM—I voted yesterday to remove our sessions to Troy. I did so for the reason that, from what I could learn, I thought Troy would be a better place than this city. I went to Troy yesterday, after the adjournment, and examined

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the hall in which we are expected to meet—ex-examined it with reference to its conveniences. I became satisfied from that examination that Troy is utterly incapable of accommodating this Convention. If I should vote now, I should be compelled to vote no, and by so voting, I should be inconsistent upon the record. I desire to be excused.

The question was put on excusing Mr. Krum, and it was declared lost.

Mr. KRUM—I vote aye.

The name of Mr. Landon was called.

Mr. LANDON—I desire to be excused from voting. This Convention has, by the report of its committee, deliberately accepted the invitation of the authorities of Troy, and thanked them for their kindness and hospitality. It seems to me that to withdraw that acceptance now, would be a gross incivility; but, as other gentlemen by their votes seem to think the contrary, and as I do not wish to put myself on the record in favor of the proposition, I desire to be excused.

The question was put on excusing Mr. Landon, and, on a division, it was declared lost, by a vote of 25 ayes, noes not counted.

Mr. LANDON—I vote no.

The name of Mr. McDonald was called.

Mr. McDONALD—I desire to be excused from voting. My reasons are these: As an individual, after I have made a contract with another party, and entered upon its fulfillment, I never question my duty to go ahead; and as I act as an individual, so I wish to act as a member of this body. I therefore wish to have nothing to do with this recantation of the contract.

Mr. FRANCIS—I demand the ayes and noes.

The PRESIDENT, *pro tem.*—A call for the ayes and noes, while the ayes and noes are pending, is not in order.

The question was put on excusing Mr. McDonald and, on a division, it was declared carried, by a vote of 44 to 42.

The name of Mr. M. I. Townsend was called.

Mr. M. I. TOWNSEND—I desire to be excused from voting for the reasons stated by my colleague Mr. Francis.

The question was put on excusing Mr. M. I. Townsend, and it was declared carried.

The SECRETARY concluded the call of the roll and the motion of Mr. Bell to consider was carried by the following vote:

Ayes—Messrs. N. M. Allen, Axtell, Baker, Ballard, Beadle, Beals, Bell, Bergen, Bickford, E. P. Brooks, Case, Cassidy, Chesebro, Colahan, Corning, Daly, Eddy, Ely, Ferry, Folger, Fowler, Frank, Fuller, Garvin, Graves, Hadley, Hand, Hardenburgh, Harris, Hatch, Houston, Kinney, Krum, Lapham, M. H. Lawrence, Mattice, Merritt, Monell, More, A. J. Parker, Pond, Potter, Rathbun, Reynolds, Robertson, Roy, L. W. Russell, Schell, Seaver, Smith, Spencer, Van Campen, Wakeman, Weed—55.

Noes—Messrs. Alvord, Andrews, Archer, Armstrong, Beckwith, Bowen, W. C. Brown, Comstock, Corbett, Curtiss, C. C. Dwight, Farnum, Field, Flagler, Goodrich, Gould, Hammond, Hiscock, Hitchcock, Landon, Ludington, Magee, Merwin, Miller, Opdyke, Prindle, Prosser, Rumsey, Silvester, Stratton, S. Townsend, Van Cott, Verplanck, Wales—34.

Mr. ALVORD—For the purpose of avoiding the possibility of having no place to meet in Albany, now that we have reconsidered this matter, I move to reconsider the vote by which we agreed to adjourn at twelve o'clock to-day, and upon that I move the previous question.

The question was put on the motion of Mr. Alvord, for the previous question, and it was declared carried.

The question was then put on the motion of Mr. Alvord to reconsider, and it was declared carried.

Mr. ALVORD—I move that the Convention do not adjourn until the place of meeting on the fourteenth of January shall be selected.

The PRESIDENT *pro tem.*—That is not strictly in order. The previous question cuts off all amendments. But by unanimous consent the amendment may be entertained.

Objection was made.

The question was put on the resolution to adjourn at twelve o'clock to-day, and it was declared lost.

Mr. BELL—I move a substitute for that resolution, that, when this Convention adjourns, it adjourn to meet at the council chamber in the City Hall at Albany, and on that I move the previous question.

The question was put on the motion of Mr. Bell for the previous question, and, on a division, it was declared carried, by a vote of 53 to 29.

The question was then put on the substitute of Mr. Bell, and it was declared carried.

Mr. MERRITT—I move that this Convention do adjourn at twelve o'clock to-day to meet on the fourteenth day of January.

Mr. ALVORD—I ask the gentleman from St. Lawrence [Mr. Merritt] to give way for a moment.

Mr. MERRITT—I withdraw my motion.

Mr. ALVORD—I move that the committee originally appointed by the Chair for the purpose of selecting a place for the meeting of this Convention, in conjunction with the Secretary of the Convention, be a committee for the purpose of making the necessary arrangements in conjunction with the common council of the city of Albany for our accommodations when we shall again meet.

The question was put on the motion of Mr. Alvord, and it was declared carried.

Mr. WALES—I offer the following preamble and resolution and ask that they may be printed:

WHEREAS, The canals of the State of New York belong to the people of the State; and

WHEREAS, The construction of said canals, without including interest, cost about $65,000,000; and

WHEREAS, Said canals are supposed to be now worth, at the lowest estimate, $60,000,000, which, at six per cent interest, would produce an annual income to the State of $3,600,000; and

WHEREAS, The management of said canals is supposed to be a fruitful source of corruption; therefore

Resolved, That a proposition for the sale of the canals of the State be submitted to a vote of the electors of the State, subject to the following conditions, viz.:

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1. That the Erie, Champlain and Oswego canals be kept up to their present capacity;

2. That the said canals be kept open during the entire season of canal navigation as public highways; and

3. That the rates of tolls on said canals shall never exceed the rates of tolls of the year 1867.

Which was laid on the table.

Mr. PROSSER—I offer the following resolution:

Resolved. That the Secretary is hereby authorized to take charge of the files and documents of members during the recess, and deliver them upon re-assembling, and also authorized to have printed any communication during the recess which may be handed him for the Convention by the canal board.

The question was put on the adoption of the resolution offered by Mr. Prosser, and it was declared carried.

Mr. LUDINGTON offered the following resolution, which he desired to be laid on the table:

Resolved, That the Committee on Revision be and they are hereby instructed to add to the fourth section of the article on the judiciary, at the end thereof, the following words and provision: "If at any time after the expiration of ten years from the adoption of this Constitution, the public necessity should require it, the Legislature may create a commission for the like purposes and with the like powers and duties of the Commission hereby established."

Which was laid on the table.

Mr. HAND moved that the Secretary be requested to make provision for the forwarding to the residence of members the Journal and Argus newspapers.

The PRESIDENT *pro tem.*—Provision has already been made.

Mr. BELL—I move that the thanks of this Convention be tendered to the mayor and common council of the city of Troy for their generous offer to accommodate the members of this Convention with suitable accommodations for their future session.

Mr. McDONALD—I hope we shall not add insult to injury in that way.

Mr. BICKFORD—Such a resolution was passed yesterday and remains unrescinded.

Mr. BELL—I will correct the gentleman. It was offered but not passed, and I appeal to the record.

Mr. KETCHAM—I move to amend by adding that the Committee on Contingent Expenses be directed to pay the authorities of the city of Troy for the trouble and expense they have incurred in the matter.

The PRESIDENT *pro tem.*—That amendment cannot be entertained under the present resolution, because the amendment is referable under the rule and the resolution is not.

Mr. COMSTOCK—I move that it lie on the table. I do not think it worth while to insult the city of Troy by thanking them.

The question was put on the motion of Mr. Comstock to lay the motion on the table, and it was declared lost.

The question was then put on the motion of Mr. Bell, and it was declared carried.

Mr. RATHBUN—I wish to give notice of a motion for reconsideration of the adoption, last evening, of the last section of the judiciary article—

The PRESIDENT *pro tem.*—That is not in order at this time.

Mr. AXTELL—I move that we do now adjourn.

Mr. GRAVES—Will the gentleman withdraw his motion?

Mr. AXTELL—I must decline to do so.

Mr. KRUM—To what day would an adjournment carry us?

The PRESIDENT *pro tem.*—To the 14th of January, at ten o'clock in the forenoon, at the place designated in the resolution which has been adopted.

The question being put on the motion of Mr. Axtell to adjourn, and it was declared carried by a vote of 40 to 26.

So the Convention adjourned until the 14th day of January, at ten o'clock A. M., to meet at the common council room in the City Hall in the city of Albany.

TUESDAY, January 14, 1868.

The Convention met pursuant to adjournment, in the City Hall, in the city of Albany.

Prayer was offered by Rev. A. A. FARR.

The SECRETARY proceeded to read the Journal of proceedings of Friday, December 20th, 1867.

Mr. BELL—If my memory serves me, there is a slight error in the Journal. It is this; that after having moved to adjourn to this place, I then moved the previous question; it was the gentleman from Onondaga [Mr. Alvord] who moved the previous question on that resolution. I hope that the Journal may be amended accordingly.

No objection being made, the Journal was so amended; and, there being no further amendment suggested, the Journal was declared approved.

Mr. GOULD—I ask leave of absence for Mr. Mattice until Thursday morning, in consequence of the death of his father.

There being no objection, leave was granted.

Mr. GOULD—I also ask leave of absence for Mr. Bickford until the morning of the 21st, in consequence of serious illness in his family.

There being no objection, leave was granted.

The PRESIDENT announced the reception of the following communication:

STATE OF NEW YORK, IN SENATE,
ALBANY, January 14, 1868.

On motion of Mr. FOLGER:

Resolved, That the use of the Senate library be, and the same is hereby, respectfully tendered to the Convention to revise and amend the Constitution. By order of the Senate.

JAMES TERWILLIGER, *Clerk*.

Mr. ALVORD—I move that the invitation on the part of the Senate be received, and that the Secretary be instructed to transmit the thanks of this Convention for the resolution.

The question was put upon the motion of Mr. Alvord, and it was declared carried.

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The PRESIDENT also announced the reception of a communication from the canal board, in response to a resolution of the Convention, in regard to the capacity of the Erie canal.

Which was laid on the table and ordered to be printed.

Mr. MORRIS offered the following resolution:

Resolved, That one hundred and sixty slips of paper, numbered from one to one hundred and sixty inclusive, be placed in a hat, and that an alphabetical list of the delegates of this Convention be numbered from the first to the last by the Secretary; that the delegates then retire from this chamber, and that some person, not a delegate, be appointed by the President to draw the slips from the hat. As each is drawn, the Secretary shall read the number and call the name of the delegate opposite the number, who shall then choose a seat from among those not taken, and shall retain it until after the drawing or forfeit it. The Secretary shall keep a list of seats not taken, and absent members shall choose therefrom, should they arrive during the present week; but after that time seats shall be assigned them by lot immediately after reading the Journal at the next meeting after the present week; that a recess of five minutes be taken to enable the Secretary to prepare a list of slips.

Mr. MERRITT—I suppose that it is hardly proper that we should draw for seats at this time, as there are many absent who may not have expected this action this morning; and it would be well, I think, to postpone action on this subject until this evening. I am not particular as to the manner of selecting seats. It is well known that there are quite a number of delegates who have not attended the sessions of the Convention since the regular adjournment in the fall, and it is hardly just to delegates who are present, and I may say to those who have absented themselves, that they should have the same opportunity of choosing their seats by proxy that we have who are and have been present. There will be no seats in this hall that will not be reasonably commodious. I should be in favor of amending the proposition of the gentleman, so that a list of those who are present should be made out, and allow them to draw seats; and that only such absentees as have been excused by the Convention, or who are necessarily absent on account of sickness, should be allowed to have seats drawn for them. I move to lay the resolution on the table until this evening.

SEVERAL DELEGATES—No! No!

Mr. MERRITT—Then I withdraw the motion, and move to amend by including in the list of delegates who are permitted to draw seats, the delegates present and those absent who have been excused by the Convention.

Mr. CURTIS—It seems to me that the result could be reached in this way: Let the names be called, and those members who are not present lose the privilege of selection unless they have been excused, or are ill, in which case seats can be drawn for them.

Mr. POND—I do not recollect precisely the terms of the resolution that has been offered; but if it means to deprive all those who are not present at this drawing of having their seats drawn for them, I am opposed to it. There are gentlemen who have been in attendance upon the sessions of this Convention, who may necessarily be absent to-day, and who have not been excused. For instance, there is Judge Landon, of Schenectady, who is to-day engaged in holding a term of his court, and who requested me the other day, if present at the drawing of seats, if permitted, to select a seat for him. There may be others who may have requested that seats be drawn for them who are not present to-day, and I submit that it would not be just to have those whose engagements may not allow them to be present to-day to draw seats, to exclude them from having seats drawn for them. I hope the resolution will be so amended as to include those who are absent and requested seats to be drawn for them.

Mr. MORRIS—This resolution was drawn in such a manner as to give members who are now present the advantage over those who are absent. It will be observed that it provides that, as the names are called of members not here, they will be passed over until after the present occasion. It is very difficult to draw a distinction, and it seems to me the simplest and most appropriate plan is, at once to proceed to the drawing of seats, and give those members who are present the advantage of being here. It was natural to expect that, when we would assemble on this occasion, among the first of our official acts would be to select our seats. The method suggested by the resolution is one of the simplest that we have yet met with, and probably would occupy less time than any I am acquainted with.

Mr. POND—I move to further amend the amendment by including among those who are permitted to have seats drawn, those who have requested some member to draw for them.

Mr. S. TOWNSEND—I should like to ask the gentleman from Saratoga [Mr. Pond] whether or not the resolution as proposed to be amended, would cover the case of my respected friend and colleague, Judge Strong, of Suffolk, who asked that I should draw a seat for him, and also the case that was mentioned this morning of the gentleman from Greene [Mr. Mattice], who had gone to attend the funeral of his father, and of the gentleman from Jefferson [Mr. Bickford], who asked leave of absence on account of illness in his family? I think that no gentleman would be willing to put the members I have referred to under a disadvantage.

Mr. MERRITT—Assuming that those in whose behalf these several requests have been made, intend to be present at the future sessions of the Convention, I will accept the amendment suggested by the gentleman from Saratoga [Mr. Pond] with this reservation: that the excuses to be presented in such cases where applications have been made shall be presented before the drawing of the names.

Mr. POND—I assent to that.

Mr. HALE—I would inquire whether the original resolution would not accomplish all that is required? The resolution of the gentleman from Putnam [Mr. Morris] provides that the roll of members shall be called. Of course, members who are not present cannot answer to their names. If a delegate is desirous to offer a special

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resolution to meet special cases where persons have made requests of members present to draw for them, he may be allowed to do so. It seems to me that under the original resolution only those in fact can draw who are present, or who have representatives present to act for them.

Mr. M. I. TOWNSEND—I am opposed to the amendment in any form that it is presented, and am in favor of the resolution offered by the gentleman from Putnam [Mr. Morris]. It is perfectly obvious that there is a great difference in the convenience of the several seats in this hall, and I know of no better way to make the selection than to allow gentlemen who are here to take their places. The suggestions made by the gentleman from Queens [Mr. S. Townsend] strikes me with great force as applicable to our venerable and most respected friend from Suffolk [Judge Strong], and I think it illustrates this business of selecting seats for gentlemen who are not here better than any thing that I could say. Judge Strong did not attend the sittings of this Convention a single day during the last session of the Convention.

Mr VAN COTT—Judge Strong was excused from attending on account of sickness.

Mr. ALVORD—I made the motion myself to excuse Judge Strong indefinitely.

Mr. M. I. TOWNSEND—I am obliged to the gentlemen for their suggestions, but they are entirely foreign to the use which I designed to make of the fact. Here was a most respectable gentleman excused from attending upon the Convention, and yet, under the proposition of the gentleman from St. Lawrence, it might happen that a most desirable seat in this hall would stand empty, as having been taken for Judge Strong. If that token of respect be extended to Judge Strong, a simliar token ought to be extended to Judge Landon because he is not here, and the same token of respect ought to be extended to every other gentleman who, either by his necessities or his misfortunes, has not been present in the Convention. It seems to me that gentlemen who are present ought to have the right—aye, I think it is their duty—to have the choice of seats in this Convention for the purpose of discharging their duties. I assent with entire satisfaction to whatever seat may fall to me, but I think it is altogether unnecessary, this straining of courtesy, to give the choice of seats in the Convention to gentlemen who are not here, and who are not likely to be here. I have three colleagues from my district whom I do not meet here to-day; but I have no doubt that one of them is necessarily detained in the transaction of his law business. I have no doubt that another is necessarily detained in attending to his business as a merchant, and I have no doubt that the third is necessarily detained in the management of the very respectable public journal of which he is the editor, and I shall claim it as a duty to my colleagues if the resolution of the gentleman from Putnam [Mr. Morris], is not adopted, will be to select seats for them because they are necessarily detained from the Convention in pursuit of their profitable employment.

Mr. VAN COTT called for the reading of the resolution.

The SECRETARY proceeded to read the resolution as amended.

Mr. CURTIS—I move to amend by substituting the following:

The SECRETARY read the substitute, as follows:

Resolved, That the names of the members be put in a box and drawn therefrom, and members present be allowed to select their seats as their names are drawn, and that members excused and those who have specially requested members present to draw seats for them be allowed to have their seats thus drawn.

Mr. CURTIS—As I understand the present proposition of the gentleman, an absent member who comes in during the week can then select one of the best seats in the hall; that, it seems to me is unfair.

Mr. HATCH—It appears to me that the resolution should be so amended, that if any member should state in his place that an absent member was detained by sickness, somebody should have the right to draw a seat for him. I believe that sickness is always recognized as a sufficient excuse for the omission to discharge a public duty. I have been present myself, in the drawing of seats by a number of public bodies, and in every case when a member of the body has risen in his place and stated that a certain member was absent on account of sickness, that public body has allowed some gentleman to draw a seat for the absentee.

Mr. MERRITT—As the substitute embodies substantially the matter proposed by myself I hope it will be adopted. It is very proper that it should be limited to the extent proposed in the substitute unless there is some evidence that they—

Mr. POND—I do not see any objection to the substitute except in this, that there is an ambiguity in it, which I hope will be cleared up. It speaks of members excused. Whether that means members excused last summer or whether there shall be an opportunity for present excuses I do not know. If the substitute embraces that, to wit, that excuses may be asked, and that there may be time to present excuses for the absence of members who are not now attending the Convention, very well; but the excuses that have been already granted have expired. This is the first meeting of this Convention after a long adjournment and there has been no opportunity to give excuses. If I may be permitted to ask for an excuse for Judge Landon, who is now detained holding court for three days until he gets through—

Mr. GOULD—Why do you not?

Mr. POND—I will ask an excuse for him if it is in order pending the motion.

Mr. GOULD—Ask unanimous consent.

Mr. POND—I move that the roll of the members be now called.

The PRESIDENT—The Chair will direct that.

Mr. ALVORD—I trust that nothing will be done except to permit those who are present to draw seats, except in the instances where persons have been actually excused in consequence of illness. Three of my associates from Onondaga are absent from here attending to their duties as

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lawyers upon a special term of the supreme court which is at present being held in that county. I would have a perfect right under these suggestions to ask that I may be permitted to draw their seats for them, just as much as Judge Landon would have the right to have a seat drawn for him because he happens to be absent in the discharge of his duty as a judge. I trust that we will narrow this matter down to a permission to those present to draw seats and those who have been excused absolutely in consequence of inability to attend upon the Convention. But I do not believe that any excuse growing out of a business position should be a sufficient excuse to entitle a person to the privilege of having a seat drawn for him.

Mr. FOLGER—I move the previous question.

The question was put on the motion of Mr. Folger, and it was declared carried.

The question was then put on the substitute offered by Mr. Curtis to the resolution offered by Mr. Morris, and, on a division, it was declared carried by a vote of 42 ayes, the noes not being counted.

The SECRETARY proceeded with the calling of the roll of delegates.

The name of Mr. A. F. Allen was called.

Mr. LIVINGSTON—Before the roll is called I would like to inquire whether it is necessary to have an excuse for a member before his seat can be drawn for him, if he has already requested a person to draw a seat for him?

The PRESIDENT—The Chair understands the resolution to relate to excuses hitherto made.

Mr. LIVINGSTON—Can an absent member who has made a special request of one present to draw for him avail himself of that privilege without having been first excused.

The PRESIDENT — The resolution provides for two classes of cases, one where the member's absence has been excused and where he has specially requested a member to draw for him.

Mr. GOULD—Is it necessary to give notice beforehand in the case of gentlemen who have requested that seats be drawn for them?

The PRESIDENT — The Chair understands that when names are called the fact can be stated.

Mr. COMSTOCK—Is the substitute open to amendment.

The PRESIDENT—It is not, it having been adopted by the Convention.

Mr. CHESEBRO—Do I understand that, on the present call of the roll, we are to state, when the names are called, those cases where we have been requested to draw seats?

Mr. HARDENBURGH—I was requested by Mr. Cooke to draw a seat for him, he being absent attending upon the funeral of Judge Wright, and I move that he be excused if that motion meets the case.

No objection being made, Mr. Cooke was excused.

Mr. ALVORD—I ask leave of absence for my colleagues, Messrs. Andrews, Hiscock and Corbett, in consequence of their inability to attend, they being now in attendance upon the special term of the supreme court. They will be here to-morrow.

Objection being made, the question was put on granting the leave of absence requested by Mr. Alvord, and it was declared lost.

Mr. REYNOLDS—I desire to ask leave of absence for my colleague, Judge Fuller, who is attending upon his court, he being in the same category with Judge Landon, and unable, therefore, to be here to-day; and I also ask leave of absence for my colleague, Mr. Ely, who will be here to-night. I have been requested to draw seats for both gentlemen when the drawing takes place.

The PRESIDENT—Then the gentleman's [Mr. Reynolds'] colleagues are already provided for by the resolution.

Mr. BELL—I ask leave of absence for Mr. Merwin, who is necessarily detained attending court.

Objection being made, the question was put on excusing Mr. Merwin, and it was declared lost.

Mr. EVARTS—I would like to inquire of the Chair, what object is to be subserved by calling the roll? As I understand it, under the present resolution absent gentlemen are entitled to have their names drawn for choice of seats in case they are represented here by proxies and have made such request.

The PRESIDENT—The Chair would inform the gentleman that the Secretary is calling the roll of delegates with a view of perfecting his list.

Mr. HALE—I would ask leave of absence for my colleague, Mr. Beckwith, of Clinton.

Mr. GOULD—Leave of absence has been already granted to Mr. Beckwith.

Mr. BEADLE—I ask leave of absence for my colleague, Mr. E. P. Brooks, of Chemung, who is detained, although he has striven very hard to attend. I would call the attention of the Convention to the fact that very few members of the Convention have been more punctual in their attendance than that gentleman. He has almost constantly sacrificed business matters at home to be present at the sessions.

Objection being made, the question was put on excusing Mr. E. P. Brooks, and it was declared lost.

Mr. HALE—I would ask whether or not, in case a person is absent on leave who has not specially requested a delegate to draw a seat for him, can have a seat drawn. I am informed by the gentleman from Columbia [Mr. Gould] that he was mistaken in reference to my colleague Mr. Beckwith, in stating that he was absent with leave; I therefore ask for leave of absence for Mr. Beckwith, who lives in a remote part of the State, and can only come here by going through the State of Vermont, having a long route to travel.

Objection being made, the question was put on the motion of Mr. Hale, and it was declared lost.

Mr. A. F. ALLEN—I ask leave of absence for my two colleagues, Mr. N. M. Allen and Mr. Van Campen, for two days.

Objection being made, the question was put on the motion of Mr. A. F. Allen, and it was declared lost.

Mr. HATCH—I desire to inquire whether my colleague, Judge Masten, is among the list of the excused; I understand he is.

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Mr. GOULD—Judge Masten was excused on my motion; he has indefinite leave of absence.

Mr. HATCH—I understood he was excused on account of sickness.

Mr. CURTIS—I move that no further leaves of absence be granted, except in case of sickness or personal inability to attend in the Convention; the motion only applying to this morning's session, and upon that I move the previous question.

The PRESIDENT—The Secretary will note the motion.

Mr. ALVORD—I would ask the gentleman what is meant by "personal inability?"

Mr. CURTIS—Actual incapacity to be here—for instance, the cars may have run off the track.

The SECRETARY again read the substitute of Mr. Curtis.

Mr. MURPHY—I rise to a question of order. We have determined to go into the selection of seats; any further resolution is out of order until that business has been disposed of.

Mr. ROBERTSON—I rise to a point of order: I would like to know how a resolution of this kind can tie up the votes and intentions of members for the rest of the day, unless it be by a rule of order of the Convention.

The PRESIDENT—The Chair will decide the point of order first taken by the gentleman from Kings [Mr. Murphy]. The Chair thinks that it is in the province of the Convention to limit the excuses if it shall see fit to do so.

Mr. MURPHY—I would ask whether the resolution can be entertained until the order of business determined by the Convention, viz., that of drawing seats, has been disposed of?

The PRESIDENT—The Chair rules that the resolution of the gentleman from Richmond [Mr. Curtis] is in order, being connected with the pending order of business. The resolution provides for the limiting of excuses, to prevent the recurrence of renewed applications for leaves of absence.

Mr. MURPHY—Will the Chair permit me to make a suggestion, that the language of the resolution is "already excused," and not persons hereafter to be excused?

The PRESIDENT—The Chair was inclined to put that interpretation upon it, but it understands the Convention to differ with the Chair.

The question was put on the substitute of Mr. Curtis, and it was declared carried.

The PRESIDENT—The Secretary informs the Chair that fifteen minutes will be required to prepare the list of names of members for the drawing.

Mr. M. I. TOWNSEND—I understand the Chair to state that the roll was being called to enable the Secretary to determine who were entitled to draw for seats.

The PRESIDENT—The substitute adopted does not require delegates to withdraw from the Chamber, those who are absent, and who have specially delegated members to draw seats for them, can have seats chosen. If there be no objection the Convention will take a recess of fifteen minutes.

The fifteen minutes having expired, the PRESIDENT again called the Convention to order when the drawing of seats was proceeded with, at the conclusion of which, the hour of two having arrived, the PRESIDENT announced that the Convention would take a recess until seven o'clock P. M.

EVENING SESSION.

The Convention re-assembled at seven P. M.

Mr. BELL offered the following resolution:

WHEREAS, Several officers and employees of this Convention have accepted positions under the Legislature now in session in this city; and

WHEREAS, By the construction and arrangement of this hall, a less number of officers and door-keepers is required than was authorized by law; therefore,

Resolved, That vacancies thus created remain unfilled, unless in the judgment of the President, the business of the Convention, and the convenience of the members require new appointments, and then, only to the extent actually required.

The question was put on the adoption of the resolution, and it was declared carried.

Mr. MERRITT offered the following resolution:

Resolved, That the privileges of the floor be extended to the Senators and members of the Assembly of this State, and also to the members of the common council of the city of Albany.

The question was put on the adoption of the resolution, and it was declared carried.

Mr. ARCHER offered the following resolution:

Resolved, That, Frank M. Jones be appointed assistant Sergeant-at-Arms, of this Convention in place of John H. Kemper.

Mr. MERRITT—I understand that Mr. Kemper has been elected Sergeant-at-Arms of the Senate, and therefore, this resolution is in conflict with the one just adopted.

Mr. BELL—I hope that this resolution will be withdrawn until the President can have an opportunity to look into this matter and see whether so many officers as we had before are required and also to see whether some of those already appointed as door-keepers cannot be assigned to do the duties of the assistant sergeant-at-arms.

Mr. ARCHER—At the suggestion of the gentleman from Jefferson [Mr. Bell] I withdraw the resolution.

The Convention resumed the consideration of the report of the Committee on the Judiciary, as amended in and reported from the Committee on the Whole, and as further amended in Convention.

The PRESIDENT declared the pending question to be upon the section offered by Mr. A. J. Parker, in the following words: "Sec. 35. The testimony in equity cases shall be taken in like manner as in cases at law."

The amendment was put on the motion of Mr. A. J. Parker, which was declared adopted.

Mr. LIVINGSTON—I move to add to section 8 the following words: "The chief justices of the several departments shall meet at such times and places as may be designated by law, for the purpose of reviewing, in such manner as the law may provide, any decision arising under the Code of Procedure made by any of the departments of the general terms of the supreme court or the

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superior court of the city of New York, or the court of common pleas in the city of New York, or the superior court of the city of Buffalo, which shall conflict with the decision of any other of the said courts." It will be perceived that the object of this amendment is to secure uniformity of decisions upon questions arising under the Code which regulates the practice in our courts. I will not take up the time of the Convention in arguing the necessity of attaining such a result, for it seems to have been admitted by every gentleman who has spoken on the subject. It is clear, however, that the doubt and uncertainty in which our present system is involved must continue, unless we adopt some such amendment as the one I propose. The court of appeals is the only tribunal now capable of settling a question which has been decided differently by two courts of independent jurisdiction, and many of the questions arising under the Code of Procedure can never reach that court. I will only cite a few: It was held, for instance, in the case of Genin *v.* Tompkins (1 Code Rep. [N. S]. p. 415), and in Vandewater *v.* Kelsey (2 Code Rep., p. 3) that no appeal would lie from an order granting or refusing a provisional remedy, nor from an order vacating or refusing to vacate such provisional remedy. Hence the superior court of the city of New York having decided that an attachment may be issued against the property of a defendant residing in New Jersey, but who is engaged in business in the city of New York, and the supreme court in the first district having come to a contrary conclution, the conflict between the decisions of those two courts on that subject must last until one of them changes its views, and the result is that a different practice relating to attachments must prevail in each court. The same may be said as to the writ of *ne exeat*, which has been held to be abolished by the superior court of New York, and to be still in existence by the supreme court. In the case of Briggs *et al. v.* Bergen (23 N. Y., 162), the court of appeals say that there is no mode in which the question arising upon an answer alleged to be sham or irrelevant can be brought to that court. In Catlin *v.* Billings (16 N. Y., p. 622), it was held that if there was any irregularity in assessing damages against a defendant without an affidavit that he had made default in answering, it was a question of practice which was not reviewable in the court of appeals. So it was also held that no appeal to the court of appeals would lie from an order refusing to set aside an execution issued without leave after five years, nor from an order striking out the costs from a judgment. If, therefore, a conflict of decisions takes place on any of those questions which cannot be presented to the court of appeals, there is no remedy whatever for the evil, and the amendment which I propose will provide one. Again, there are a variety of questions relating to pleadings which never are presented to the court of appeals for the very good reason that, as no appeal can be taken except from the final judgment in the action, it is in many cases deemed advisable to conform to the decision of the court below, although believed to be erroneous, rather than suffer judgment to be entered for the sake of having the question reviewed; of such a nature, for instance, are questions arising on an order for judgment on demurrer, or on a frivolous answer, in which cases no appeal will lie to the court of appeals from the order where no judgment has been entered. (2 Code Rep., p. 70; 27 N. Y., p 640.) So it is with questions arising on interlocutory orders; as no appeal can be taken from such an order, directly, unless it prevents the rendering of a judgment, the suitor, in many instances, must take his choice between conforming to the decision of the court below or persisting until the judgment in what may prove after all to be an erroneous course. Remedies in courts of equal jurisdiction, should be administered with an even hand; it is therefore important that a conflict of decisions on a question arising under the Code of Procedure should be settled promptly, and without the delay necessarily attending the present mode of review. No stronger argument can be urged in favor of a change in that respect than the bare statement of the fact that many important points of practice remain yet unsettled, although our present system has been in existence nearly twenty years. The amendment which I propose adapts itself to the report of the committee; it does not in any way interfere with it, it merely clothes the chief judges of the several departments with very limited powers of review, confined to questions arising under the Code, as to which there may be a conflict of opinion between the several general terms of the supreme court and the other courts established by the Constitution; and, in my judgment, it is a necessary amendment to insure that uniform course of proceeding in all like cases which we have never yet had since the adoption of the Code.

Mr. COMSTOCK—I propose an amendment to that. I am not certain, Mr. President, but that something of the kind might very well be adopted by this Convention. It proposes an intermediate court of review between the general terms of the supreme court and the court of appeals. That intermediate court, if it be thought wise to create it all, should be confined, I think, in its functions and jurisdiction, to that class of questions which cannot go by appeal from the general terms of the supreme court to the court of appeals. The proposition as it now reads, is too broad. The questions which may be carried from the general terms to this intermediate and new court of review, are questions of any kind or nature which may arise under the Code of Procedure Now, there are very many fundamental questions involving rights under the Code of Procedure which may go by appeal directly to the court of appeals and be there settled; but as to that class of questions, I am quite sure that we do not need this intermediate court of review. I propose, therefore, to amend this proposition so that it will be limited to questions of mere practice, which are not appealable to the court of appeals.

Mr. FERRY—I have a single remark to make which will not interfere with this amendment. This proposition is further objectionable because I can see no reason why it should be confined to the courts specified by the resolution, inasmuch as we have given original jurisdiction to some

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extent to the county courts. If it is to be applied to any, it should be applied to all.

Mr. LIVINGSTON—The reason for that limitation is, that there is an appeal, as I understand, from the county courts to the supreme court.

Mr. HALE—The amendment offered by the gentleman from Kings [Mr. Livingston] has, it seems to me, some merits which ought to be considered by this Convention. The amendment proposed by the gentleman from Onondaga [Mr. Comstock] limits the application of the amendment offered by the gentleman from Kings [Mr. Livingston], and with great deference to the gentleman's opinion [Mr. Comstock], it strikes me that his amendment limits it too much and that if such a tribunal is to be constituted it would be better that it should have jurisdiction in some cases that are appealable to the court of appeals. I have heretofore in this Convention endeavored to advocate some plan by which the diversity of decisions in the supreme court might be remedied. It is admitted that this diversity does exist to a great extent, and that it is an evil; and I favor any proposition which will tend in any way to put an end to that evil. Now I think the proposition of the gentleman from Kings [Mr. Livingston] will do it. As I understand this proposition—I may not understand it correctly—he does not propose that there should be an appeal directly from the general term to this State general term, if I may so call it, which consists of the four chief justices; but this general term, consisting of these chief justices, is to have such appellate jurisdiction as the law shall give to it. It would be left to the Legislature to determine in what manner that jurisdiction should be exercised. I do not understand that a distinct and separate appeal to that general term would be necessary, but that in case of an appeal from the special term to the general term coming within the cases mentioned in the amendment of the gentleman from Kings [Mr. Livingston], the Legislature, under this provision, could direct that it should be heard in the first instance at this State general term, consisting of four chief justices. Now, as to the details of a plan of this kind, although I have my own views about them, I do not think discussion is now necessary; perhaps the method suggested by the gentleman from Kings [Mr. Livingston] would be as good as any that could be proposed. It would establish one tribunal in the supreme court which could regulate these conflicting decisions and matters of practice and the decisions of which, unless they were reversed by the court of appeals, would be the law, not of one department or one district merely, but of the whole State. In his remarks, the gentleman from Kings [Mr. Livingston] has mentioned several matters in which there are conflicts of decision, and they are familiar to every lawyer. We all know, for instance, that in the superior court of the city of New York, it has been for years held by the general term that the writ of *ne exeat* was abolished, that it no longer existed. The general term of the supreme court in the first district, on the other hand, has held that that writ was not abolished, and that a party in a case which would have entitled him to it before the adoption of the Code, was still entitled to it. The result of this difference has been that a party bringing a suit in the supreme court finds that he has a remedy against the defendant which a party residing in the same city, but bringing his suit in the superior court, has not; and, as has been said by the gentleman from Kings [Mr. Livingston], thus far there has been no way found of reconciling these conflicting decisions. The same may be said in regard to a great many other questions, not only questions of practice, but questions of legal right. On a former occasion I called the attention of the Convention to several decisions of that kind—in regard to the measure of damages in certain cases, and in regard to tenancy by curtesy—and a great many question of that kind will present themselves to the minds of lawyers who have investigated the subject, in regard to which the law of the State is, for all practical purposes, one way in one district and in the adjoining district directly the reverse. I have not examined particularly the phraseology of the proposition of the gentleman from Kings [Mr. Livingston], but I cannot see why something of this kind is not practicable and desirable. I cannot see why we ought not to have it; and I will favor any proposition which will enable the Legislature (because of course we cannot settle the details here) to provide for a uniform system of practice, and so far as may be, a uniform law throughout the State of New York. The gentleman from Otsego [Mr. Ferry] asks why not apply this provision to the county courts as well as to the superior court and the court of common pleas. The answer is obvious. There is no general term of the county court, and a decision of the county court is appealed directly to the general term of the supreme court; and if that general term in one district decides adversely to the general term in another district upon that appeal, then the State general term, which is suggested in this proposition of the gentleman from Kings [Mr. Livingston], would come in and settle the matter. I would remark, too, that this proposition of the gentleman from Kings differs in many respects from similar propositions which have been made before, and voted down—not in its design, but in its form and detail; and therefore this Convention has not committed itself in opposition to the plan as now presented.

The question was put on the amendment offered by Mr. Comstock, and it was declared carried.

The question then recurred on the amendment of Mr. Livingston as amended, which was declared carried.

Mr. HADLEY—I move to amend by striking out of section 16, line 14, the words "the supreme," and inserting after the word "justice" the words "or judge," and after the word "of" the word "any," so that it shall read, "but no person shall hold the office of justice or judge of any court longer than until the first day of January next after he shall have arrived at the age of seventy years." The object of the amendment is to have the same provision apply to the superior court, the court of common pleas of the city of New York, the city court of Brooklyn, the superior court of Buffalo, to the county courts—in

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short, to all judicial officers, so that no judge in the State shall hold the office of justice or judge longer than until the first day of January next after he shall have arrived at the age of seventy years. This section, as it now stands, confines the provision to justices of the supreme court, and this amendment is intended to extend the application of it to the courts I have mentioned. In the preceding section there is a provision to the same effect in regard to the court of appeals, but there is no provision of that kind applying to the superior court of Buffalo, the superior court of New York, the city court of Brooklyn, or other county courts and the various surrogates' courts, and my object is to make the provision general.

The question was put on the motion of Mr. Hadley, and it was declared carried.

Mr. HADLEY—That amendment having been adopted, I now move to strike out from section 2, article 6, these words (they being rendered unnecessary by the adoption of the other amendment): "No chief judge or associate judge of said court shall remain in office longer than until the first day of January next after he shall have arrived at the age of seventy years." As the section now stands, that provision is applicable only to the court of appeals, but the amendment just adopted supersedes that and makes the provision applicable to the supreme court as well as to all the other courts.

The question was put on the amendment of Mr. Hadley, and it was declared carried.

Mr. CHESEBRO—I move to amend by striking from the eighteenth section, line six, the words, "where the parties reside in the county," and insert instead thereof "where the defendant in the action shall reside in the county." The Convention has adopted the amendment proposed by me, and ingrafted upon the Constitution the section conferring upon the county courts of the State original jurisdiction to the extent of one thousand dollars. In drafting the amendment this language was used which I move to strike out: "where the parties reside in the county." That, I say, seems to be a mistake, and I therefore move to amend, as I have stated, by substituting the words "where the defendant in the action shall reside in the county." The object is this: it is entirely proper that a non-resident of the county may be allowed to bring an action in the county court against a party residing in the county, but of course it would not do for a party residing in the county to be authorized to bring an action there against a person residing out of the county. It should be strictly confined, as it was in the old court of common pleas, to cases in which the defendant resides in the county. I think the amendment will strike the Convention as being eminently proper. In fact, I may say it was by an error of mine in drawing the original section that this provision was left in the way it now stands.

The question was put on the adoption of the amendment of Mr. Chesebro, and it was declared carried.

Mr. HARRIS—I propose to amend section 16, line nine, by inserting after the words "fourteen years" the following: "from the first day of January next after such election," otherwise the term of the court of appeals which is to be elected in the spring of 1869 will expire on the first Monday of July—an inconvenient time.

The question was put on the motion of Mr. Harris, and it was declared carried.

Mr. HITCHCOCK—I move to strike out, in line twenty-one of the eighteenth section, the word "sixty," and to insert in its place the word "forty" so as to restore the provision of the present Constitution.

Mr. FOLGER—I hope that amendment will not be adopted. All our effort in relation to the office of judge of the county court has been to make it an office of greater use, and to add to it such additional duties and such additional emoluments as will secure for it an efficient incumbent. Now one great reason why the office is not such at present, is that the duties of county judge and surrogate are divided in the smaller counties where the paucity of population does not demand that those offices should be divided. With this view, at a prior session of this Convention, I moved that the word "forty" should be stricken out from this section and the word "sixty" inserted. I made that motion for the reason that I did not believe, and the Convention seemed to adopt that idea, that in a county with a population of about 60,000 it was necessary that there should be two offices, one for the duties of surrogate and the other for the duties of county judge. I believed that prudence and good sense demanded that, in a county with that population, or less, these two offices should be joined in one, thereby giving to the incumbent more duties to perform, consequently securing to the office more emolument and more respectability. Now, I hope this Convention will not go back after having put sixty in the place of forty and change the number back to forty, which would bring us to the same position we are in already, under the present Constitution. The county of Ontario, which I in part represent, shows practically, the detriment which results from the division of this office in counties of small population. The office of county judge in that county during the first term under the Constitution of 1846 was held by a person who performed the duties of both county judge and surrogate; a person eminently fit for the position, and who performed the duties of both offices well, and received an amount of emolument sufficient, in a measure, to attract to the office such a person; but after his retirement from the office the board of supervisors, under the authority given by the Constitution of 1846, separated the offices, and from that time until this neither office has increased in public esteem. I propose that these offices should be united in one man, the county judge, who by reason of his increase of duties would be in a position to demand from the board of supervisors an increase of emolument—for I hold that increase of emolument always brings to the office better men to fill it and secures for it a greater degree of respect from the public, especially where higher emolument is the result of higher and more extended grade of duty. I hope, therefore, that this amendment which would carry us back to the basis of 40,000 inhabitants in a county, will not be adopted.

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Mr. HITCHCOCK—A great change has taken place in the duties of the county judge since that provision was inserted. At the time that provision was inserted no original jurisdiction had been given to the county courts. The duties of a county judge were, therefore, very much less under the provisions of the Constitution of 1846 than they will be under this Constitution. So far as the gentleman has cited his own county, I can say nothing about it; but in relation to my county, I can say that we desire to have both offices, although our population does not by any means reach sixty thousand. Both offices are necessary to our interests.

Mr. GOULD—I have very little personal knowledge with regard to the working of this plan; but since the insertion of the number "sixty thousand" by the Convention, many persons of my own county, who have a knowledge of the subject, tell me that one officer would be quite inadequate to discharge the duties of county judge and surrogate, that the surrogate is continually employed, and that if he had the duties of county judge added, it would be physically impossible for him to perform them. There are many persons in my county who have spoken to me on the subject, and I think it would suit that county, at all events, better to have two officers rather than to have one individual perform the duties of both offices; and from what I hear there are many other counties which would be seriously inconvenienced if this change were made.

Mr. WAKEMAN—There is a large number of counties in this State which would not be affected by the amendment. The county of Genesee, for instance, has a population of about thirty-three thousand only, and I am entirely satisfied that if the population of that county were to increase to fifty thousand, the duties of these two offices could not be performed by any one man. The county judge of that small county is engaged all the time in holding courts and in surrogate business under the present arrangement, and now in this Constitution we have increased the jurisdiction of the county courts. I trust that hereafter the county court will be what may be called a home court, to which parties will largely resort; and it seems to me that if we increase the number of population required in this section to sixty thousand, no one man can perform the duties of these two officers. It may be that in small counties like Genesee a single officer can perform these double duties, but I am satisfied that in counties of sixty thousand population or thereabouts, no one man can do it.

The question was put on the motion of Mr. Hitchcock, and it was declared lost.

Mr. HALE—I move to strike out the word "cases" in the sixth line of section 18, and to insert instead thereof the words "actions for the recovery of money only," so that it will read, "shall have original jurisdiction in actions for the recovery of money only, where the parties reside in the county, where the damages claimed shall not exceed one thousand dollars." The object of my amendment is to meet what I suppose to be the design of the Convention in adopting this provision that is, to limit the jurisdiction of the county courts to actions in which the amount involved does not exceed one thousand dollars. We know there are a great many suits in which the amount of property actually involved is vastly more than one thousand dollars, but in which the amount of damages claimed may be less than that sum. Take, for instance, an action for specific performance: sometimes, under the Code of Procedure, an action to enforce the specific performance of a contract to convey real estate is combined with a count for damages; and so there are many other cases which might be named where the count for damages is joined with what would have formerly been the subject-matter of an equity suit; and it seems to me that the county court, as these words now are, would have jurisdiction of an action for the specific performance of a contract where the property involved exceeded one hundred thousand dollars in value, provided the party joined with it a claim for damages limited to less than one thousand dollars; and, as I suppose, the design of the Convention was to limit the jurisdiction of the county court, and not to give it general equity jurisdiction, it seems to me that this amendment which I now propose will accomplish that design.

Mr. COMSTOCK—I hope that amendment will not pass. It was certainly my idea, for one, to give the county court jurisdiction in all cases where the matter in controversy did not exceed one thousand dollars. Under the amendment of the gentleman from Essex [Mr. Hale] the county court cannot take jurisdiction even by law, by grant of the Legislature, except in strictly pecuniary actions, where the object is to recover a sum of money.

Mr. HALE—If the gentleman will allow me to interrupt him for a moment, I will call his attention to the succeeding part of the sentence which given it "such other original jurisdiction as shall from time to time be conferred upon it by the Legislature." The Legislature may confer additional jurisdiction in the case of which the gentleman speaks.

Mr. COMSTOCK—The gentleman is quite correct. The Legislature may confer jurisdiction in other cases besides actions to recover damages or money; but the question before the Convention is whether the county court shall take this jurisdiction by the Constitution instead of waiting for the action of the Legislature. Now, there are a great variety of controversies involving less than one thousand dollars, where the object sought is not the recovery of money at all. The gentleman from Essex [Mr. Hale] has mentioned one of them: an action for specific performance of a contract, in which the plaintiff does not seek to recover damages, but only to have a decree that the contract shall be performed. Then take the action so common in our courts, for the specific recovery of chattels, in the nature of replevin, according to the former nomenclature. I do not myself see any reason for distinguishing in the Constitution between an action for damages to the amount of one thousand dollars, and any other suit where the thing in controversy does not exceed that value. I am, therefore, opposed to the amendment of the gentleman from Essex [Mr. Hale]; and I was about to move to insert, after the words "damages claimed," the words

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"or matter in controversy," to the end that the county courts may have original jurisdiction to that extent.

Mr. FOLGER—In my judgment, the difficulty with the amendment is that we do not arrive at the value of the thing in controversy until the jury have fixed it, so that we have to wait for their verdict before we know whether the county court has jurisdiction or not. Now, in the case cited by the gentleman from Onondaga [Mr Comstock], the case of replevin, the question of value is one of the questions submitted to the jury, and we have to await their verdict before we arrive at the value of the property in question, so that the question of jurisdiction would be postponed until the verdict came in, and if the verdict was for more than one thousand dollars the court would have no jurisdiction, and the litigation be without result.

Mr. COMSTOCK—The language is the same in the judiciary act of the United States, and in many cases the jurisdiction is defined by the amount in controversy. There is a way of pleading to the jurisdiction if the amount is beyond it.

Mr. McDONALD—It seems to me that this brings with it its own remedy, because persons entitled to more than one thousand dollars would be pretty sure not to sue in a court where the jurisdiction was not over that, but would go to the supreme court.

Mr. FOLGER—It is not always the plaintiff that is alone interested in the value of the property. Suppose that I have in my possession a horse, or any other chattel—say a diamond pin—which I value at three thousand dollars. The gentleman from Ontario [Mr. McDonald] demands it, and brings his replevin suit for it, estimating its value but five hundred dollars. Am I to submit to his valuation of it? By no means. I think it is worth more, and I await the opportunity to show by my proofs that it is worth more, but when I have made that proof, I have ousted the court of jurisdiction, and I am subjected to a fruitless litigation, because my opponent brings me into that court to contest for a piece of property worth a larger sum than comes within the jurisdiction of the court.

Mr. McDONALD—Mr. President—

The PRESIDENT—The Chair will hear the gentleman by consent of the Convention, but it is against the rules for any gentleman to speak twice upon the same proposition. There being no objection, the gentleman may proceed.

Mr. McDONALD—I simply wish to suggest that the section furnishes a remedy for this difficulty. Such a case would be removed to the supreme court on the suggestion of the defendant that it is claimed by him that the county court has no jurisdiction.

The question was put on the amendment of Mr. Hale, and it was declared lost.

Mr. COMSTOCK—I now move the amendment which I suggested in line 7 of this section, to insert after the words "damages claimed" the words "or value in controversey."

Mr. CHESEBRO—I do not see how it would be possible, as has been suggested by my colleague [Mr. Folger] to arrive at the conclusion whether the court has jurisdiction of the cause of action at all until after the verdict of the jury is rendered. That is my only objection to the amendment of the gentleman from Onondaga [Mr. Comstock], for I should be very glad indeed to have actions of the kind named by him brought in that court, but I do not see how it would be possible to say whether the court has jurisdiction in the action until the verdict is rendered, determining whether, in point of fact, the property in controversy is of the value which will bring it within the jurisdiction of the court. I am, therefore, opposed to the amendment.

Mr. ROBERTSON—I propose to amend the proposition of the gentleman from Onondaga [Mr. Comstock] by adding the words "in which the damages or the value of the subject-matter in controversy claimed shall not exceed one thousand dollars; the mode of estimating such value or amount of damages to be determined by the Legislature."

Mr. COMSTOCK—I will accept that amendment.

Mr. DALY—The amendment which is now proposed indicates the difficulty involved in the original proposition. The section itself proposes that the Legislature may confer such additional jurisdiction from time to time upon the county court as it thinks proper. Now, if it be desirable to increase the jurisdiction so as to embrace actions of replevin, or actions in the nature of proceedings *in rem*, it is competent for the Legislature to do so. The provision is already very broad, and includes all cases in which the damages claimed shall exceed one thousand dollars. I think, therefore, it will be more prudent to leave the matter under the general provision which gives the Legislature power to increase the jurisdiction. By making the amendment proposed we shall create the difficulty of determining how the amount or value shall be ascertained, for the purpose of knowing whether or not the court has jurisdiction.

The question was put on the amendment of Mr. Comstock, and it was declared lost.

Mr. FOLGER—I move to amend by inserting in section 3, line twelve, after the word "elected," the words "or appointed." The phraseology used here was employed to distinguish between persons elected to the court of appeals, and those who came into it from the supreme court; but, as recent events have shown, some gentlemen come to sit in the court of appeals by appointment, instead of by election, and this amendment will provide for this contingency.

Mr. HARRIS—There is a defect in the statement of the proposition in the eleventh section. It is provided by that section that in 1873 it shall be submitted to the electors of this State to determine whether vacancies in the various judicial offices of the State shall be filled by appointment and not by election. That question refers to sections 2, 6, 15 and 18. The result of the vote as it is declared in the section, applies only to sections 2 and 6, making no declaration as to the effect of the vote upon the local judges in the cities of New York, Brooklyn and Buffalo, or upon the county judges. I propose, therefore, to remedy that defect by striking out in lines nine and ten, the words "judges of the

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court of appeals, and justices of the supreme court;" and making the word "office" "offices," and by inserting thereafter the words mentioned in said sections;" which will make the section complete, and carry out the purpose of its framers.

The question was put on the amendment of Mr. Harris, and it was declared carried.

Mr. LAPHAM—I propose to add after the word "law," in the third line of section 6, a provision in substance like this: "but no appeal to the court of appeals shall be allowed where the amount of the recovery of the property involved in the judgment is less than five hundred dollars, except upon the certificate of the supreme court pronouncing the judgment, that the case is a proper one to be taken to the court of appeals. I am aware, sir, that it will be claimed that the provision as it now stands authorizes the Legislature to make this limitation upon the right of appeal; but I am not willing to trust it to legislation, and desire some provision to be inserted in the body of the Constitution upon the subject. All who have been observers of the practice under the present system, cannot fail to have seen that the unlimited right of appeal without respect to the amount involved in the controversy, has been one of the chief causes of the accumulation of business upon the calendar of the court of last resort. We have a provision in the law as it now stands, by which no action originating in a justice's court can be brought to the court of appeals, except upon such a certificate, and I propose by this amendment to limit the right of appeal where the amount in controversy or the amount of the recovery is less than five hundred dollars, in the discretion of the court pronouncing the judgment. If they certify that the case is one involving a question proper to be taken to the court of appeals, it can be brought there; but if they decide that it is one of a different character, then the mere caprice, or the personal feeling which so often influences litigants, will not be allowed to carry the case to the court of appeals. In my judgment, the adoption of a provision of this character will do more toward relieving the court of last resort, and toward preventing a new accumulation of business in that court, than any other provision which can be adopted. I see no injustice whatever in it. It seems to me that unless a party proposing to bring a case involving a trifling amount to the court of last resort, can satisfy the judges of the supreme court that it is a proper cause to be brought there, and obtain their certificate to that effect, he ought not to have the right to take it to the court of appeals.

Mr. A. J. PARKER—I am entirely opposed to the amendment now proposed. I admit that it would very much relieve the court of appeals to deprive parties of the right of appeal. That is a very summary mode by which we can relieve any court. It is proposed that no one shall be allowed to present his case on appeal to the court of appeals, unless the amount in controversy is five hundred dollars or more. Now, I believe it is our duty to throw the doors wide open to suitors, and allow them to have their controversies settled by the courts of law and by the more valued judgment of the highest tribunal. It is our duty to furnish courts enough, courts that shall be adequate to the decision of all cases brought before them. I do not believe in the propriety of saying that a person who has but five hundred dollars involved in a suit shall be excluded from having it heard and decided in a court, where, if the sum happen to be somewhat larger, he would be permitted to be heard. That is giving the benefits of the court to the rich and denying them to the poor, and I do not believe in that discrimination. I admit that we could very much shorten the labors of the Convention upon this subject by saying that parties shall not be heard in the higher courts, but I do not think that is our duty, nor do I think that it is in accordance with a wise public policy. We are bound to afford litigants a hearing, we are bound to establish courts to hear them. The people all have a right to be heard in the courts without regard to the amounts in controversy, and we should provide for securing to them the enjoyment of that right. It is proposed that, if the court which decides adversely to the litigant shall certify that the case is a proper one to appeal, then the appellant may be heard on appeal. That, sir, I think, is entirely wrong in policy. The court decides against a party, and then it is proposed to require him to apply to that same court for a certificate that his case is a proper one to go to a court of review. The court that has decided against him is not a fair tribunal to pass upon that question. It is already committed upon the subject. It has expressed its judgment that the party has no right of redress, and it is a mere matter of caprice with the court whether the appeal be allowed or whether it be refused. Generally, it will be the inclination of the court to refuse it, whatever it may decide to do in any particular case, and I think it is unjust and impolitic, in every respect, to compel a party to apply to the very court that has decided against him, for the privilege of going to another court to have that decision reviewed. Now, it seems to me, Mr President, that we had better not attempt any changes like this. There is a limitation now as to the amount in controversy—a limitation of fifty dollars, which enables a party to litigate his claim in the supreme court and all the courts in the State—a nominal sum. Virtually, at this time, the courts are thrown open to all without regard to the amount in litigation; and I hope this Convention will not attempt to restrict it in the mode proposed. In the first place, the question really belongs to the Legislature, and not to the Convention. They have power now to impose such restrictions if they think proper, or if they dare to do so, or choose to do so, that justice may be administered by denying a hearing. They have a right to resort to the policy now if such a policy is right. I trust that no amendment will be adopted here interfering with the right of an appeal from the supreme court.

Mr. SMITH—I agree with the gentleman who has just taken his seat [Mr. A. J. Parker], that the amendment proposed would be unwise and unjust, that the doors of the Temple of Justice should be open to all, and to all alike, the high and the low, the rich and the poor. But this

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amendment proposes to make a distinction in favor of the rich man. If a man is worth his millions, and has a controversy involving more than five hundred dollars, he may move it on through all the courts, even to the court of last resort; but the poor man having a controversy involving less than five hundred dollars—which amount may be his all—when he reaches the supreme court, finds the doors closed to him thereafter, and he must submit to injustice whether he will or no, provided he has failed to obtain justice in the lower court. I do not believe that the pending amendment is in accordance with the theory of our government, or is one that ought to be sanctioned, or would be sanctioned by the people.

Mr. DALY—This subject was very fully discussed in the Committee on the Judiciary, and after what the committee deemed mature deliberations, they arrived at the conclusion that it would not be wise or expedient to adopt it. So far as the suggestion that it might reduce the number of appeals from the supreme court, it is worthy of consideration now whether the last measure which we have adopted increasing the jurisdiction of the county court, and really making that court an efficient tribunal, will not do all that is required to diminish the accumulation of business in the court of appeals. There is very generally a desire by a defeated party to have his case reviewed by another court after it has been determined by the tribunal in which it was brought. In very many instances, the party is satisfied if two tribunals, one superior to the other, unites in the same judgment. Under our present organization, the party is compelled to go in the first instance to the supreme court, for the reason that the present jurisdiction of the county court is exceedingly limited, and he is not usually satisfied with the judgment of the supreme court alone, but he desires to go to the next highest tribunal, which happens to be the court of final resort, and therefore the business of the court of appeals has largely accumulated. But by increasing the jurisdiction of the county court in all cases where the damages claimed do not exceed a thousand dollars, we re-establish in the State what should never have been abandoned, a comprehensive local tribunal in each of the counties of the State convenient to the parties, where the witnesses can be readily obtained, the cause speedily tried, and where justice may be as satisfactorily rendered as in the larger jurisdiction of the supreme court. In the great majority of instances, after a party has had a hearing and determination by a jury, and by the court in the county court, and that has been affirmed upon appeal to the supreme court, he will probably be satisfied, and not be disposed to go further. I think, therefore, Mr. Chairman, that we have devised the best remedy which we can for diminishing the business of the court of appeals; and if it be desirable to provide against that contingency in the future, it would be much better in my judgment to insert a provision in the Constitution that the Legislature may hereafter, if they should deem it expedient, limit the jurisdiction; but that it would be exceedingly unwise to do this in the Constitution itself, and there fix the precise sum which should limit it. For these reasons I fully concur with the views of the gentleman from Albany [Mr. A. J. Parker].

Mr. FERRY—Men differ here as to the propriety of a limitation of this kind, and they will continue to differ hereafter; men of equal intelligence will honestly differ upon this point, and I argue from that that it is safer to leave it where the committee left the matter, and that is to the discretion of the Legislature. They may try the experiment, and if it works badly they can change back; whereas, if we go on and constitutionalize the system, and it operates injuriously, we shall have no remedy of. that kind. There is another feature that strikes me as rendering this amendment objectionable. A man has a cause of action, we will suppose, which involves less than five hundred dollars. He goes to a counsel and asks his advice. The case is important to him. He may be a poor man. The counsel, a conscientious and intelligent attorney, seeks to advise him correctly in regard to his rights. He sets to work and looks over the subject with care, and after that he says to his client: "I have no doubt as to the legal principles which should determine this case, but our courts are somewhat uncertain in their decisions, and I may be compelled to go to the court of last resort before I can get justice done you." Every lawyer who practices has that thought in his mind at times, and he is obliged to say to clients who call upon him that unless he can get the case to the court of last resort he cannot feel confident of a favorable result. With this amendment adopted, he will be obliged to say, "I may be stopped midway in the litigation, and I cannot tell whether you can get justice done or not." Here will be this fetter upon the action of honest and intelligent counsel, which will be embarrassing, to say the least, and it certainly is objectionable in that point of view. There is still another objection. The sum of five hundred dollars is not in all cases the entire amount involved in the recovery of a judgment of that amount. Such recovery is frequently a bar to the recovery in one way or the other of a larger amount, and the judgment in an action involving less than five hundred dollars might prevent the recovery of a million of dollars in another action because when the larger suit shall be commenced, it would be claimed that the question involved had been decided, and must be regarded as *res adjudicata*.

Mr. LAPHAM—With the permission of the Convention, I would like to say a few words more.

The PRESIDENT—The gentleman having spoken once is barred from speaking again, except by unanimous consent. There being no objection, he may proceed.

Mr. LAPHAM—This suggestion of mine which I have made, is not entirely my own. I have made it in pursuance of a conversation I had last evening with a distinguished jurist who was a member of the courts of this State before the present Constitution was adopted, and who has adorned the court of last resort as one of its most valuable members. The provision is suggested as the result of his observation and experience. Now, sir, as to the hardship and injustice I desire

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to say a word. I am behind no man in my regard for the rights of the poor man. I stand by them as firmly and as zealously as the gentleman from Albany [Mr. A. J. Parker] or the gentleman from Fulton [Mr. Smith]. It is to protect the rights of the poor man that I would put this provision in the Constitution. What is the class of cases which go to the court of appeals? They are actions where the poor man recovers against the man of property, having a meritorious cause of action and where his antagonist says: "If you do not stop this litigation I will law you as far as there is a court to which I can appeal." That is the class of cases which go to the court of appeals merely to gratify the will of the rich ligitant and keep the poor man out of what is justly his due. I assume, under this provision, that if the poor man has a judgment which is meritorious, and subsequently his opponent seeks to bring the case into the court of appeals for mere delay and annoyance, it will be a privilege which will be denied him. I assume, sir, that if the poor man or any man having a meritorious cause of action has failed to succeed in recovering it, the court which pronounces judgment will regard the case as one proper to give a certificate as being one which should go to the court of last resort for further examination. There is no bar against the carrying of cases to the court of last resort contained in this provision. There is nothing in it which is broader or more sweeping in its provisions than the present statute in regard to the largest class of actions which are tried in this State, those which originate in the justices' courts, where the right of the poor man is involved, and in those cases you cannot get to the court of appeals unless the supreme court certifies that it is a case proper to be carried there. A man may have two hundred dollars involved in a case, which may be all that he has, and yet if the decision is adverse to him in the supreme court he cannot get his case carried to the court of last resort except upon such certificate. It may be said that the poor man is denied justice by this. There is nothing in that idea. The provision which I suggest is intended and designed, and that will be the effect of it and the only effect, to prevent the bringing of appeals to the court of appeals merely to gratify the caprice or vindictive feelings of litigants who are abundantly able to carry a case to that court. It is that class of litigants who will be estopped by this provision, and against whom I regard this provision as being aimed in its result.

Mr. FOLGER—The difficulty, to my mind, with the amendment of my colleague from Ontario [Mr. Lapham] is that it takes as a basis of the right of appeal a valuation in money, that no cause can be carried to the court of appeals unless it involves a certain amount. In my judgment, that is a basis which is entirely fallacious and illusory. Let me illustrate: the gentleman may have a client living in Canandaigua who may desire to bring an action of ejectment for a share of a farm worth five thousand dollars, and he may carry that case under the amendment through all the courts without any restriction. I may have a client living in Geneva who chooses to enforce the same title for another share by an action of trespass *quare clausum*, in which he may recover merely nominal damages. He [Mr. Lapham] may succeed at last, in the court of last resort in behalf of one person, and I may be defeated in behalf of another person just short of the court of last resort, although the suits in each case were brought to enforce a right depending upon the same title. He may go to the court of appeals with his case, and I am bound to submit to the judgment of the supreme court under his amendment unless the judges agree that it is a case which should be carried higher. He may succeed upon the same question upon which I may be defeated, and the very same title be held good in one person and bad in another. I say it is entirely illusory—the fixing upon a valuation, the putting on of a tariff and providing that appeals shall not be carried to the court of appeals unless the sum involved amounts to so much money. The sum total in litigation in one aspect may be less than five hundred dollars, and in the other it may be five thousand dollars, and the same question would, in the one case, be stopped in general term, which in the other case would go to the court of appeals. Thus it is that the value of the property that a party claims in one case gives him a right to go the court of appeals, while another party is debarred, although the question involved is precisely the same, because the value of his damages claimed does not come up to the limit of the gentleman's amendment. There is undoubtedly a necessity felt in this State that there should be some limit to the right of appeal, or some equable and uniform hinderance to appeals, but it does strike me that the limit of dollars and cents is an entirely partial and unequal basis upon which to fix that limit.

The question was put on the amendment offered by Mr. Lapham, and it was declared lost.

Mr. COMSTOCK—I move to reconsider the vote by which the amendment offered by the gentleman from Albany [Mr. Harris] to section 11, which relates to the submission to the people in 1873 the question whether certain judges shall be elected or appointed, was adopted.

The PRESIDENT—Except by unanimous consent, the question to reconsider cannot now be entertained.

Mr. KRUM—I object.

SEVERAL DELEGATES—No, no.

Mr. COMSTOCK—I think that the motion I make had better be considered now, as it certainly will have to be considered to-morrow. The amendment offered by the gentleman from Albany [Mr. Harris], was offered under a misapprehension.

Mr. KRUM—I withdraw the objection.

Mr. COMSTOCK—I did not understand the effect of the amendment of the gentleman from Albany, when it was offered, and I have learned in conversation with him that he offered it under some misapprehension. It will be recollected that the Convention, when the subject was under consideration sometime ago, after considerable discussion, deliberately voted to confine this question of submission to the judges of the court of appeals and the judges of the supreme court. The error is in printing the section as it now is. Of course the numbers "fifteen" and "eighteen" in the fifth line ought not to be there. Then the

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section will be consistent with itself. As I have stated, the fact I believe is that the amendment of the gentleman from Albany [Mr. Harris] was offered under a misapprehension, because he was not present when a vote was taken to except the local courts from the operation of the provision. The object of the gentleman from Albany can be obtained, and the section made consistent, by striking out the words "fifteen" and "eighteen" in line five.

Mr. HARRIS—It is true, as the gentleman from Onondaga [Mr. Comstock] has said, that I was not present when any such vote as that of which he speaks was taken. I do not now regard it as a matter of much consequence whether we confine this submission to the judges of the supreme court and the court of appeals, or whether we extend it to the judges of other courts. My preference would be to extend it to all judges. I think it is better, therefore, to let it stand as it has now been amended; but if the Convention have deliberately determined that this submission shall be confined to the judges of the court of appeals and the supreme court, then the motion of the gentleman from Onondaga ought to prevail; otherwise I should prefer that it stand as it does.

Mr. KRUM—I offered the amendment in Committee of the Whole to include the officers spoken of in sections 15 and 18, and upon my amendment this section was made to embrace the officers named in those sections. I am not aware of any vote having been taken in the Convention doing away with the vote in Committee of the Whole, thus extending this provision to the officers named in those two sections. My argument in Committee of the Whole for the extension of the provisions of this section to the officers named therein, was that these officers were local officers —to wit; the judges of the superior courts of the city of New York, and the city of Buffalo, and the county judges throughout the State. My position, then was, that if it was wise for the people of the State of New York, and they thought it best that the judges of the court of appeals and of the supreme court should be appointed, it was best also to extend the appointment to these local tribunals, that there was a greater necessity in fact, for appointing judges of these local courts than there was for the appointing of judges of the court of appeals and the supreme court. I believe so still. The Committee of the Whole agreed with me then, and I believe that due reflection since has not changed the minds of gentlemen of the Convention. I hope, therefore, that the amendment of the gentleman from Onondaga [Mr. Comstock], will not prevail, but that the section will stand as it was originally adopted in Committee of the Whole.

Mr. COMSTOCK—I regret that this question has got into this situation by a mere misapprehension of what this Convention has formerly done. It is true that upon a full discussion of this question in Convention—not in Committee of the Whole, according to my recollection—it was decided that the submission in 1873 should be confined to the judges of these two higher courts. It was decided upon a full view of the reasons which were then given for so confining it. Now, it may be true that whatever reason can be given for appointing a judge of the court of appeals, or a judge of the supreme court, is just as available for appointing a county judge, and county judges are included in the proposition for submission offered by the gentleman from Schoharie [Mr. Krum], and the gentleman from Albany [Mr. Harris]. But when the question was considered in the Convention at the time referred to, it was stated that we could not get a fair and deliberate expression of the sense of the whole people of this State if it were presented in a form to excite local prejudices and to be influenced by local circumstances. That was the ground upon which it was put, and it was thought, therefore, wise to confine the submission to those judges who were voted for by the whole people of the State, or by the people in large judicial districts. If it affects the county judge, then you array parties in the county upon a great question which affects the whole State, and a fair and honest expression upon the elective principle or upon appointment as against election can never be had unless the people give that expression unaffected and uninfluenced by the circumstances and the prejudices of localities. If, on a view of the whole subject and of the principles involved in the general question, the people shall declare by their vote that the appointive principle is preferable in regard to these high courts, then the Constitution can be amended, carrying the same principle into the election of local judges; but I should consider it entirely useless and hopeless to submit the question to the people at all if it is to go to them affected by this local prejudice and these circumstances.

Mr. HADLEY—The argument of the gentleman from Onondaga [Mr. Comstock] has satisfied me, if I needed to be satisfied before, that his motion to reconsider ought not to be adopted. When we have reached a point that we dare not trust the people of a locality to elect their county judge, or when we have reached a point that we dare not trust the people of a county to determine whether the judge shall be appointed or not, I say that we have arrived at a point where we dare not trust the people to elect a judge of the supreme court or a judge of the court of appeals. The very argument that the gentleman uses, is the strongest argument that can be used to satisfy my mind—

Mr COMSTOCK—Will the gentleman allow me to interrupt him a moment?

Mr. HADLEY—Certainly.

Mr. COMSTOCK—It is not proposed by any one to interfere with the election of county judges. On the contrary, the motion which I make to reconsider, is, in effect, that we shall continue to elect county judges until the Constitution shall hereafter be amended

Mr. HADLEY—But it is proposed that we shall submit to the people in the year 1873, whether or not county judges shall be appointed or elected. The motion of the gentleman from Onondaga [Mr. Comstock] is to the effect that we shall only submit to the people the question of whether supreme court judges, and judges of the court of appeals shall be appointed. I would like to have the gentleman from Onondaga, or any other gentleman,

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tell me why the people of any county in this State shall not be allowed to judge for themselves in 1873 whether they will elect county judges in the future, or whether they shall be appointed; or whether the people of the city and county of New York shall not be permitted to say whether they will elect or have appointed the judges of the superior court and of the court of common pleas. And the same with reference to the city of Buffalo. In other words, Mr. President, I am opposed to this reconsideration for the reason that I want the people of every locality to have their attention expressly called to this question and to say whether they will have an appointed or an elected judiciary. It is for that reason that I am opposed to the reconsideration, and am in favor of the section as it now stands. I desire the people of every locality, in every county, in every town, and even in every school district to understand whether or not in 1873 they will elect their county judges, or whether they would prefer to have them appointed by the Governor. I wish the people to understand it with reference to the superior court and the court of common pleas of the city of New York, the city court of Brooklyn, and the superior court of Buffalo, and of every county court in the State. I want the people aroused to the importance of the question, and they will be aroused to its importance if the question is submitted to them in their various localities in relation to their local courts; whereas, if it is simply confined to the State courts—the supreme court and the court of appeals—they will not have their attention so certainly and directly called to it as they would have if their locality was to be affected by it.

Mr. DEVELIN—The gentleman from Seneca [Mr. Hadley] seems to be somewhat in error in regard to the courts in the city of New York. It is not proposed by this clause in the Constitution to submit to the people of the city of New York whether their judges shall be elected or appointed.

Mr. HADLEY—Certainly.

Mr. DEVELIN—It is proposed to submit to the people of the State of New York whether the judges in the city of New York shall be elected or appointed

Mr. FOLGER—I think the gentleman is in error. Section 16 expressly applies to the city of New York.

Mr. DEVELIN—Section 11 declares that the people of the entire State shall determine whether the judges in the city of New York shall be elected or appointed. I say that the gentleman from Seneca [Mr. Hadley] is mistaken in supposing that the people of the city of New York are to decide this question of themselves.

Mr. HADLEY—By section 15 the gentleman from New York [Mr. Develin] will discover that the superior court and the court of common pleas of the city of New York, and the city court of Brooklyn, and the superior court of Buffalo, as well as the county courts, are all in the same category.

Mr. DEVELIN—I understand that, but it is the people of the State of New York—the people of the entire State—who are to decide whether the judges in the city of New York are to be elected or appointed. It does not leave the matter to the people of the city of New York to decide. It does not leave it to the people of a county to decide whether the judge of that county shall be elected or appointed, but the decision is left to the people of the whole State. My friend from Onondaga [Mr. Comstock] is perfectly right in saying that local prejudice will probably defeat any fair, straightforward, unbiased expression of public opinion on the part of the people, if you include in this submission the local judges in the city of New York. We, of New York, have for years been restive under legislation in Albany in regard to our city, and under appointments made under that legislation. If, then, the question is to be submitted whether the Governor, be he democrat or be he republican, shall appoint the judges of the court of common pleas and of the superior court, in the city of New York, I venture to say that there will be a majority of from thirty to forty thousand against the proposition, and the same result would occur in many of the counties of the State.

Mr. HITCHCOCK—In most of them.

Mr. DEVELIN—Yes, in most of them. Therefore, if it is the desire of the Convention that there should be an unbiased expression of opinion upon the part of the people of the State whether the judges of the two highest courts shall be appointed or elected, the question should not be prejudiced by bringing local considerations to bear in its determination.

Mr. A. J. PARKER—I hope this motion to reconsider will prevail. I was satisfied, at the time the amendment was offered, that it was offered under a misapprehension; for I recollect perfectly well that this question was discussed, and well understood when it was determined in the Convention on the amendment offered by the gentleman from Onondaga [Mr. Comstock], which confined the submission of the question to the appointment of judges in the court of appeals and the supreme court. Certainly it would be manifestly improper for the people of the State to determine whether the judges in the city of New York should be elected or appointed, and it would be also improper for them to determine whether the officers included in the fifteenth section should be appointed or elected in other parts of the State. It seems to me it is better in submitting this question in 1873 to submit simply the question whether the judges who are properly State judges—judges whose jurisdiction extends over the entire State—should be appointed or elected. That includes only the judges of the court of appeals and the supreme court. In regard to them, there is an interest felt throughout the entire State, over which their jurisdiction extends. I believe it will be wise to strip the question of any other consideration except the one whether those judges shall be elected or appointed, leaving the question in regard to local judges to be determined thereafter.

Mr. KRUM—Mr. President—

The PRESIDENT—The gentleman having spoken once, is barred from speaking again under the rules; but there being no objection he may proceed.

Mr. KRUM—I have great deference to the

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opinion of the learned gentleman from Albany [Mr. A. J. Parker], and also to the opinion of the learned gentleman from Onondaga [Mr. Comstock], but I have been unable, in listening to their arguments in favor of the reconsideration of the vote by which the amendment of the gentleman from Albany [Mr. Harris] was adopted, to determine any principle upon which they seek to reconsider it, save that unless it is reconsidered the proposition to appoint judges of the court of appeals, and of the supreme court will be defeated by the people. Neither of them take the position that it is not right. Neither of them take the position that the judges of the superior court, and of the county court ought not to be appointed. They stand in the Convention upon the mere question of policy, and not upon the question of principle. It strikes me that we should determine this question upon principle, and if it is best to appoint supreme court judges and judges of the court of appeals, is it not also upon principle, equally right to appoint judges of the county courts, and judges of the superior court? I submit that this Convention is belittling itself when it stands here upon the question of policy and not upon the broad question of principle. Fear of defeat is the only argument, fear of defeat before the people, and not the question of right and wrong. It is said that the people of the whole State ought not to determine whether or not the judges of the superior court in the city of New York should be elected. If the people of the whole State ought not to determine whether the judges of the superior court in the city of New York should be elected, then I ask why the people of the whole State should determine whether the judges in the third judicial district should be elected or appointed? The question is one as to the judiciary of the whole State, and, although the superior court judges of the city of New York belong to the local court in that city, yet, after all, the question of the judiciary is a question for the people of the whole State, so far as its basis is concerned, to fix upon and determine. I believe that, as this question includes the superior court judges, and the judges of the county court, the people will become sufficiently exercised about it in its submission to them, that they will look into it and vote upon it intelligently, and that the leaving out of the county court judges, and the superior court judges, will leave the subject to be passed upon at the election, without the people fairly considering the principle involved. I hope that the motion to reconsider will not prevail.

The question was put on the motion of Mr. Comstock to reconsider the vote by which the amendment of Mr. Harris was adopted, and, on a division, it was declared lost, by a vote of 22 ayes, the noes not being counted.

Mr. HARRIS—I find, on a more careful observation, that the amendment I proposed to section 16 does not cover the whole case. I therefore propose to apply the same amendment to section 2, line four, after the words "fourteen years," insert "from the first day of January next after said election," thus making it applicable to the court of appeals. The amendment I first offered applies only to the other judges.

The question was put on the amendment offered by Mr. Harris, and it was declared adopted.

Mr. HADLEY—I move to amend by adding in section 34, in the second line, the words "may try such offenses with or without a jury;" so that the section will read as follows: "Courts of special sessions shall have such jurisdiction of offenses of the grade of misdemeanors as may be prescribed by law, and may try such offenses with or without a jury." The object of the amendment is this: that courts of special sessions may try offenses without a jury if the Legislature should see fit to create such courts; as, for instance, cases of assault and battery and some of the minor grades of misdemeanor.

The question was put on the amendment of Mr. Hadley, and it was declared lost.

Mr. S. TOWNSEND—I would like to inquire of the chairman of the Judiciary Committee as to what position they have left the clause in the present Constitution, in reference to courts of conciliation, whether they have touched that matter at all in their report?

Mr. FOLGER—I will answer the gentleman by saying, that we have not touched that subject at all.

Mr. S. TOWNSEND—Then I move to add the clause in the present Constitution providing that courts of conciliation may be organized, amending by inserting the word "shall" in place of the word "may," so as to make their establishment imperative upon the Legislature. I wish the gentlemen of the Judiciary Committee had given more consideration to that clause.

The SECRETARY read the clause proposed to be added by Mr. S. Townsend as follows:

"Tribunals of conciliation shall be established with such powers and duties as may be prescribed by law; but such tribunal shall have no power to render judgment to be obligatory on the parties, except they voluntarily submit their matters in difference, and agree to abide the judgment, or assent thereto, in the presence of such tribunal, in such cases as shall be prescribed by law.

Mr. S. TOWNSEND—That is the idea. [Laughter.]

Mr. ALVORD—I believe that in the history of this State, under the present Constitution, there has never been but one tribunal of conciliation created by the statute under the Constitution, which gives the right to the Legislature to create such a tribunal. That instance was in the county of Delaware, and the court cost some ten thousand dollars by way of fees to the judge thus appointed, although the judge tried but three cases and decided but one. [Laughter.]

Mr. S. TOWNSEND—My object in offering the additional clause is merely to assert a principle. It is a practice now to refer cases, and it was thought of sufficient importance in the Convention of 1846 to place this clause in the Constitution. It was thought that the people would like to have some recognition of a court which would have more influence than would attach to a mere voluntary reference—that they would like to have a court before which they could go under certain circumstances and certain forms prescribed by the Legislature for the settlement

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of differences. I should say that the author of the clause of the present Constitution was a very distinguished gentleman originally of the mercantile profession, and who had studied law in the city of New York, but who was more distinguished as a traveler, an author and a lecturer—Mr. John L. Stevens. He brought this proposition forward and sustained it by a most admirable speech in the Convention on the ground that in his numerous travels in other countries, he saw this principle recognized owing its origin principally to the Turkish Cadi and the Alcalde of Spain, and that he had found the most beneficial results to flow from it. His argument before the Convention was so intelligent, persuasive and conclusive that a select committee was appointed in reference to the matter and the clause would have been passed precisely in the form which I have suggested, had he not good-naturedly yielded to the suggestion of a gentleman in the committee that the word "may" should be used instead of the word "shall," because the gentleman said the word "may" had the same force as the word "shall." [Laughter.] And I have since heard it stated that in legal terminology the words are synonymous. Although it has been said that but a single court has been established under the clause referred to, and that in the county of Delaware, I presume that some local circumstances must have interfered with its successful operation. Certainly it cannot do any harm to adopt this clause unless some better argument can be adduced against it than has yet been suggested.

Mr. E. BROOKS—I did not design to say one word during the discussion of this judiciary article, but the amendment which has been proposed by my colleague [Mr. S. Townsend] seems to be an eminently proper one. My conviction is a conviction based somewhat upon observation and inquiry, that such a provision inserted in the Constitution, and made mandatory upon the Legislature to establish such a court, would result in great public good. I believe, sir, that it would abridge to a very large extent the amount of litigation, and whatever contributes to lessen litigation, in my judgment, will result in a public benefit. Now, sir, as a layman, I feel the prejudice which gentlemen of the legal profession naturally have in regard to what may be called innovations upon the customs of the State and country respecting courts of law and practice in them; but these courts of conciliation are common in some of the old countries. I believe they practically exist, though under another name, in France, and in some other countries, and wherever they have been tried, so far as my inquiries have gone, they result in public good, and save a large amount of expense to the State and to the people. Certainly a proposition of this kind cannot do any harm. I believe, sir, if it was in the power of the Convention to establish such a court, while it would encounter a great amount of local prejudice, it would also result in abridging litigation, and conferring great benefits upon the people in settling questions of this kind in a friendly and amicable manner.

Mr. FOLGER—May I ask the gentleman to state what he understands by a tribunal of conciliation?

Mr. E. BROOKS—I will tell the gentleman. I understand the term to be precisely what the words express. The gentleman knows very well what a tribunal is; and he also knows what is meant by conciliation. I suppose that the term might go to this extent; that the power of such court would be defined by the Legislature of the State—that such a court might have power conferred upon it of this character: for example—here are two parties to a litigation; they agree according to terms provided by law that the question between them shall be settled, and settled finally, without carrying a controversy through all the forms of law up to the court of appeals.

Mr. FOLGER—We have just such a court as that already, without direct constitutional provision. If the gentleman from Richmond [Mr. E. Brooks], and myself have a difference, we can settle the matter by arbitration, and arbitrators are no more and no less than a tribunal of conciliation. He and I may, if we feel indisposed to resort to litigation, agree upon arbitrators—right-minded men to settle our difference for us. We can submit the matter to them, and that is a practical tribunal of conciliation. The Revised Statutes already provide for arbitrators except in certain specified cases—cases relating to the title of real estate and perhaps others. Even under the Code of Procedure, we may agree upon a state of facts and submit the case to the supreme court without a formal suit, and thus have the case decided without the calling of witnesses and without any of the pharaphernalia of a lawsuit and thus have the difference between us decided in an amicable way. What more do we need as a court of conciliation? The gentleman [Mr. E. Brooks], and I may select the gentleman from Ontario before me [Mr. Chesebro], and he may hear the statement of facts in an informal manner and do what he regards as just between us. That to-day is the law, except in respect to title to land. Or, if we desire more formality, we may submit the facts as we may agree upon them in writing to the supreme court. What do we want another tribunal for? The difficulty is not in the Constitution; it is in human nature itself, which will not be conciliated. It prefers litigation. It prefers to frame an issue and to try the case at circuit and at general term and at the court of appeals. There is no difficulty to-day in any two men who differ about their rights, submitting the question at issue to a tribunal of conciliation elected by themselves—flexible, free as the air—and without any constitutional provision. And for that reason I am opposed to the proposition of the gentleman from Queens, [Mr. S. Townsend].

Mr. DALY—The gentleman from Richmond [Mr. E. Brooks] is in error in supposing that the opposition to courts of conciliation arises solely from professional prejudice on the part of members of the legal profession. There is no such idea. Courts of conciliation have been in existence in Europe for nearly a hundred years. King Christian, one of the kings of Denmark, first established a court of that description. It is exceedingly simple in structure, and peculiarly adapted to the kind of government where it pre-

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vails. The gentleman from Queens [Mr. S. Townsend] has suggested that there is no jurisdiction so comprehensive as the Turkish Cadi. When the litigants come before him for conciliation he has the power to do with them what he pleases. But we have learned from the days of Magna Charta that our rights are to be determined by certain legal principles, and that upon the continuance and application of those principles depends the preservation of our rights. It is true that the experiment of courts of conciliation has been tried, and that within certain limits they are practicable, but those boundaries are exceedingly limited. If gentlemen had before them the report of the Judiciary Committee they would find appended to it an account of the judicial system of France, and would see that there is a court in the city of Paris, and another, I think, in the city of Lyons, called the *court of prudhommes*—or a court for working men—where small controversies arising between employer and employee, generally between mechanics and master-mechanics, are settled. It is a court composed in part of a judicial officer, but the greater part of journeymen mechanics or masters; and the experience in regard to that court is, that it works exceedingly well—that many cases every year are conciliated. And, sir, there is no difficulty in the Legislature creating, if they deem it judicious, a court of that nature in the city of New York, and try the experiment there, as it has been tried in the city of Paris. It requires no constitutional provision to put such a tribunal in operation. A constitutional provision such as is contained in the Constitution of 1846 suggests to the mind a fundamental change in the whole system of our judicial organization. It suggested an impossibility that was fully verified by the result. Educated, as we have been, to have our rights determined, and strictly determined, by rules and principle, no person is willing to trust the disposition of his rights to the arbitrary judgment of any man.

Mr. S. TOWNSEND—In reply to the gentleman who has just spoken [Mr. Daly]. I will say here that the only penalty which the author of the proposition in the Convention of 1846 calculated to attach to the provision was that the appellant should lose all costs. That was the great feature of the Alcaldo courts of Spain and other countries which owe their origin to Spain. No such penalty as suggested by the gentleman, of severing the neck by the scimiter, has been proposed.

Mr. DALY—I do not know that I went into the details to the extent of suggesting that the Turkish Cadi had the power of taking off the heads of those before him, though such cases have occurred. I would suggest, in reply to the gentleman, that the difference is only one of degree between the Spanish Alcalde and the Turkish Cadi. God forbid that we should ever become, in our land, subject to courts of that description. I have said, Mr. President, that if it is desirable, the experiment of a court of conciliation might be tried in the State. The great mistake made by the Convention of 1846 was in supposing that such a principle could be introduced into the general judicial organization of the State. And I would repeat to my friend from Queens [Mr. S. Townsend] that courts of conciliation already exist, as has been already stated by the gentleman from Ontario [Mr. Folger], and yet the people seem to be unwilling to avail themselves of them. For many years I have been acting in a court in the city of New York, which happens to have special jurisdiction over proceedings arising under the provisions of the Revised Statutes relating to arbitration; and I would say, as a matter of information extending over a practical experience of over twenty years, that so unwilling do suitors appear to be to trust their rights to that provision in reference to arbitration, that cases of arbitration in which judgment has been entered up in our court have been exceedingly rare. During that period, in nearly every case where such proceeding has been instituted, the parties have been so dissatisfied that they have almost uniformly appealed to the court to exercise the limited jurisdiction it has to review and set aside arbitrations; and I say it justifies the remarks that our people are too enlightened to trust the disposition of their rights to the arbitrary judgment of any man. If the opposite principle is right—if the reference of differences to the Cadi and Alcalde is the correct principle—then the whole system of jurisprudence which we have followed and acted upon for centuries, is fundamentally wrong. I admit that in a limited sphere it would be possible to settle small claims arising for wages in courts of conciliation. But as the gentleman from Onondaga [Mr. Alvord] has said, the experiment has been tried in a larger way, and it was not successful. It is not necessary that the word "shall" should be placed in the Constitution. The word "may" exists in the present Constitution, and in consonance with that provision, the Legislature established a court of this description in one of the rural districts in this State, and the result is, as has been stated by the gentleman from Onondaga, that it cost the State nearly ten thousand dollars, with scarcely any suitors. There was a provision that it might continue in existence for three years and might then be renewed upon an application to the Legislature. No such application was made; no voice was raised for its continuance. I need only ask in conclusion, Mr. President, that after twenty years' experience with a provision of this kind in the Constitution, what utility is there in repeating it, or asking us to continue a constitutional provision of this kind in the Constitution for twenty years longer, when it is in the power of the Legislature to organize a tribunal of that nature, if the public exigency should require it, and it should be left to the discretion of the Legislature to exercise it or not.

Mr. E. BROOKS—With the consent of the Convention, I will make a single remark. I wish to say in reply to the gentleman from the city of New York [Mr. Daly], that I certainly entertain no prejudice against the members of the legal profession. Long ago I learned to admire that sentiment uttered by Edmund Burke, in regard to Lord Grenville as a British Minister, when he said that he was bred to the law, which, in my opinion, "is one of the noblest of the human professions, but which is not apt, ex-

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cept in minds peculiarly constituted, to enlarge and liberalize the mind in deliberating upon measures outside of their own profession." I have looked upon a court of conciliation as having a tendency to conciliate persons who have a tendency to engage in litigation, or who are unwittingly drawn into it, and I believe that such a court would abridge, in a large measure, time and the expense, both of the State and the people, which is taken up by this kind of controversy. And let me add, as a layman, and as a member of this Convention,—and it may sound very revolutionary in this body—that if I had the power I would abolish four-fifths of the present courts of law and establish courts of equity in their place [laughter]; for, in my judgment, sir, a majority of the decisions made are not at all equitable in their character, but are the results of legal acumen and ability, and ability sometimes to make the worse appear the better reason. In regard to the judgments which are rendered—and I say it in all respect—a Convention composed, as this is, nearly four-fifths of members of the bar, the decisions in a great majority of cases are not decisions of equity, but are decisions of law apart from equity.

The question was [then put on the motion of Mr. S. Townsend, and it was declared lost.

Mr. LAPHAM—I desire to take the sense of the Convention upon another point by amending the twenty-eighth section. Those who remember the first judicial election held under the Constitution of 1846 will remember how well it illustrated the great importance of having judicial elections distinct from all others. I believe, sir, that the success of an elective judiciary depends more upon having selections thus made by the people, independent of all other considerations than the fitness of the nominees for their places—than upon any other consideration which can govern the conduct of the electors. I propose, therefore, to strike out the whole of the twenty-eighth section down to and including the words "sixty-nine" in the fourth line, and to insert in the place thereof a provision substantially in these words:

"All elections for judicial officers, except justices of the peace, shall take place at such time as the Legislature shall prescribe, between the first Tuesday of April and the first Tuesday of June in each year."

So as to separate the elections for judicial officers from all other elections, and have them take place at the period of the year that I have named instead of a later period and nearer the time of the annual and general elections.

The question was put on the amendment offered by Mr. Lapham, and, on a division, it was declared lost, by a vote of 20 ayes; noes not counted.

Mr. FOLGER—By way of reconciling the differences as to section 11, I would move to amend, so that the questions proposed to the people by that section shall be separated, and that there shall be one question as to vacancies in the offices of judges and justices mentioned in sections 2 and 6, and another question as to the vacancies proposed in the offices provided for in sections 15 and 18, both to be submitted at the same election. Of course the amendment will require some verbiage, which I cannot give at the present time; but that is the idea, that there shall be two questions proposed to the people, one as to filling vacancies in the offices of justices and judges created by sections 2 and 6, and a second question as to those offices created by sections 15 and 18.

Mr. KRUM—I move a further amendment, so as to submit it in three separate propositions; the officers mentioned in sections 2 and 6 to be included in one, those in section 15 in another, and those in section 18 in the third.

The question was put on the amendment offered by Mr. Krum, and it was declared lost.

The question recurred on the amendment offered by Mr. Folger.

Mr. COMSTOCK—I hope that amendment will prevail. One of the questions submitted relates to the State judges; the other question relates to the local judges. The question is divisible in its nature. It depends upon distinct considerations, and may receive a distinct decision.

Mr. HADLEY—I desire, Mr. President, to say frankly, that I am unqualifiedly in favor of an elective judiciary, now and in 1873, and I desire to have this question presented to the people now, on the adoption of this Constitution, and in 1873 in a manner that shall call the attention of the entire people of the State to this question of an elective judiciary in the most positive and distinct manner, and for that reason I would like to have it presented so that it will call the attention of every citizen in every county of the State, the citizens of New York, and Buffalo and Brooklyn, as well as the people of the State at large, to this question, as to whether their judiciary shall be elected or appointed. For that reason I am opposed to this division. It is only another ingenious move, on the part of my learned friend, the chairman of the Judiciary Committee [Mr. Folger], to get round the question of presenting squarely to the people the question whether they will have an elective judiciary in 1873 or not, and I desire this Convention now, and here, to put it in such a form that the people in 1873, after some of us, whose hair is white, shall be gone, that the young men of to-day that shall be the active men of that day, shall have their attention called to it, so that they shall understand that the people then shall have the choice of electing their judges in the counties, in the cities, and in the State at large. This is, and I say it with no disrespect to any one, in my judgment, an attempt at some future day to do what gentlemen dare not fairly do to-day, have an appointive judiciary; and I believe the people of to-day, in 1868, will insist, nor do I believe they will be the less backward in 1873, in insisting, upon an elective judiciary for their county judges, and for common pleas judges, and superior court judges, in New York and Buffalo, as well as the judges of the supreme court and the court of appeals. I desire that the whole thing shall go together. I am opposed, I will frankly say, to the entire section, but if they will submit to the people in 1873 the question whether there shall be an appointive judiciary in any degree or not, I desire that it shall extend not only to the court of appeals and the supreme court,

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and to the superior court of New York and the common pleas of New York, and the superior court of Buffalo, and the city court of Brooklyn, which, now for the first time, are here to be constitutionalized, but also the county courts; and for that reason I am opposed to the motion of my friend from Ontario [Mr. Folger].

Mr. ALVORD—I understood the gentleman who has just taken his seat, to say that gentlemen were undertaking to do a thing here indirectly which they dared not do directly. I desire to state that I stand here ready to vote, and have voted in favor of the appointing power rather than the elective, with regard to the judges; and, having failed in that, giving honestly and fairly a vote in that direction, I desire to do the next best thing, submit the question to the people to determine how it shall be in the future. I have no sort of question, that if the people shall be called upon to vote upon this question of appointing or electing the officers of our higher courts, they will decide in favor of appointment, and I desire that they shall not be trammeled in their decisions by local influences brought to bear upon them with regard to their local officers. It is an attempt on the part of these gentlemen who dare not submit this question to the people naked and simple, so to trammel it by connecting it with their local courts, and raising up local prejudices in regard to it, as to defeat the great end of the appointment of the judicial officers of the higher grades by the Governor and the Senate, as the people of this State, in my opinion, desire to do to-day.

Mr. HALE—This Convention has already resolved that it will submit to the people of this State the question of appointing or electing the judiciary. The only question now is, how that submission can most fairly be made. The gentleman from Seneca [Mr. Hadley] argues that this is a trap, sprung here by gentlemen who are in favor of the appointing principle. I insist that the proposition made by the gentleman from Ontario [Mr. Folger] involves the only fair way of getting at the sense of the people. And why? I have heard many gentlemen of experience differ in regard to where they would apply the appointive and where the elective system. I have heard gentlemen say they were in favor of electing the judges of the State at large, but that they were in favor of appointing local judges. Why should not the voters of the State who entertain that opinion, have the privilege of saying by their votes that they wish their local judges appointed, but are willing to have the State judges elected by the people of the whole State? On the other hand, I have heard the opinion expressed in the Convention by others, that while they would favor the election of local judges, they would have the State judges appointed by the Governor. Why should not those who entertain that opinion have the privilege of saying so by their votes? It is not a question which involves for our decision the question of an appointive or elective judiciary; but it is simply, whether the people shall be permitted to say, if they choose to do it, that they will have their local judges appointed, but will let the State judges be elected; or, on the other hand, that they will have the judges of the court of appeals and the supreme court appointed, but will elect their local judges; and if the people desire that, if they desire that the appointive system shall apply to one branch of these judicial officers, and the elective system to the other, I would like to have any gentleman tell me why they should not be allowed the privilege of expressing their desire, and why such distinction should not be made, if in accordance with the will of the people?

The question was put on the amendment offered by Mr. Folger, and it was declared carried.

Mr. CHESEBRO—I desire to move an amendment for the purpose of testing the sense of the Convention upon a question which was discussed in the Committee of the Whole and ingrafted in the sixteenth section as the sense of the committee, as to the period of time at which a judge should be legislated out of office. I therefore move, in the sixteenth line of the sixteenth section, to insert after the word "seventy" the word "five," promising, in case the sense of the Convention shall adopt that amendment, to move a similar one in regard to the other judges named in section 2. I believe, inasmuch as we are merely here judging for ourselves as to what period of time it is proper to fix for a judge to sit upon the bench, that there will be no danger whatever in this Convention fixing a further limitation, and leaving to the people to determine at what period of time a judge shall be incapacitated by age from occupying a position upon the bench. I know of men in this State, who are to-day on the bench, whose term of office under the present Constitution will expire after they are seventy-five years of age, and I know of men who have been upon the bench, who have adorned it, who are ornaments now in the profession, that have passed the period of seventy-five years, and are in active practice. I see no judgment or good sense in this body limiting the period, when, if we fix the limitation at seventy-five years, or any other period beyond that now limited by the section, we only leave it to the people to determine whether or not a man is in that degree of capacity and physical ability to discharge the duties of the office up to the period of seventy-five years, or any other period of time that we may designate. I therefore think it would be wise to fix the period at not less than seventy-five years, and leave it for the people to judge whether or not the individual they shall select for the position is equal to filling that office up to that period of time.

Mr. HITCHCOCK—That proposition has been passed upon in Convention.

The PRESIDENT — The Chair is not aware that it has.

Mr. CHESEBRO—I think the question was passed upon in the Committee of the Whole, but not in the Convention.

The PRESIDENT—The Chair is informed that it was in Committee of the Whole.

Mr. MORRIS—If we do not fix the limit of seventy years I do not see any use in fixing any limit at all. Why not let the poor old gentleman hold his office until he dies a natural death?

The question was then put on the amendment offered by Mr. Chesebro, and it was declared lost.

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Mr. GRAVES—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Graves, and it was declared lost.

Mr. GRAVES—Is it in order now to move to strike out a section?

The PRESIDENT—Amendments generally are in order.

Mr. GRAVES—I move then to strike out section 11. I submit, whether, after the protracted discussion which has been had upon this question—

Mr. KINNEY—I rise to a point of order. I feel quite confident that this same motion has been entertained once in Convention to strike out that section.

The PRESIDENT—That is the opinion of the Chair.

Mr. DALY—If there are no further amendments to be offered to the section I deem it but just to an absent gentleman [Mr. Hardenburgh] to say that he has a motion pending for the reconsideration of the provisions of the eighth section; a question which was much debated in the Convention, and which he desires to renew. As I was opposed to his motion I deem it but an act of justice to rise and say that he has been suddenly called away from this Convention to attend the funeral of Judge Wright; that he is very anxious to try the sense of the Convention again upon this subject; and I suggest, if such should be the disposition of the Convention, that this matter shall remain until to-morrow morning.

Mr. DEVELIN—He will not be here till Friday. The judge will be buried Thursday.

The PRESIDENT—The Chair is of opinion that that reconsideration has once been had.

Mr. FOLGER—I would suggest that when the gentleman from Ulster [Mr. Hardenburgh] arrives he can reach his end by moving to instruct the Committee on Revision just as well as by a reconsideration, if it is in order.

The PRESIDENT—The Chair understands the gentleman from New York [Mr. Daly] to assent to that proposition.

Mr. STRATTON—I move to amend section 9 by striking from the first and second lines the words, "of the court of appeals and of the supreme court at general term," so that the section will read, "No judge shall sit in review of a decision in which he formerly participated." If this principle is good for any thing it is good for every thing, and it should apply to every judge who takes part in a decision, and not apply simply to two of the courts in the State.

The question was put on the amendment offered by Mr. Stratton, and it was declared carried.

Mr. GRAVES—I do not desire to appeal from the judgment of the Chair, but I submit again that the motion to strike out the eleventh section has not been heard in the Convention. It has been heard in the committee, but I think not in the Convention, if my recollection is right. I do not desire to persist in it.

The PRESIDENT—The Chair still adheres to its opinion, but will entertain the motion, if there be no objection.

Objection was made.

Mr. CHESEBRO—I desire to move an amendment to the twentieth section. After the word "surrogate," in the fourth line, to insert the words, "and to exercise the power of judges of the supreme court at chambers." The amendment will have the effect of conferring upon local officers of counties the powers of the supreme court at chambers, and will be substantially conferring upon those officers the same powers which were formerly exercised by the supreme court commissioners. In many counties of the State it is very desirable that that power should be conferred upon those officers.

Mr. FOLGER—I ask the gentleman from Ontario [Mr. Chesebro] whether he proposes to give more power to these local officers than is given to the county judges and surrogates. His amendment will have that effect.

"The Legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of county judge and surrogate."

In addition to those duties he proposes to give them the duties of the supreme court judges at chambers. It seems to me that it will be an anomaly, an incongruity, to create an officer inferior to another to act when the superior is incapitated, and yet with other and greater powers than his superior. Apart from that it does seem to me that the county judge has sufficient powers and duties already, without giving him the duties of the supreme court at chambers.

Mr. CHESEBRO—I am indifferent whether this amendment is inserted at the point where I have designated in the twentieth section, or whether it shall be inserted after the word "surrogate" in the fourth line of the eighteenth section, as has been suggested to me by a delegate. What I desire is simply this, that there shall be an officer in the county who shall have the power of performing the duties of the supreme court judges at chambers, which is simply the granting of orders, which the profession generally understand must at times be obtained upon application very summarily. It is the exercise simply of a discretionary power which is reviewable before the supreme court, and, therefore, it cannot by any possibility or probability do any injury, while it will be a great accommodation in many counties of the State to the profession. It has come to my knowledge that there are counties in this State where members of the profession are required to go a distance of fifty or sixty miles to obtain simply an *ex parte* order from a judge. I think that in counties of that description it is eminently proper that we should provide an officer who shall have the power of granting those orders without compelling the lawyer to go to a supreme court judge at the distance he is now required to go. The Committee on Revision can put that provision in at any point. I am indifferent where it comes in; whether at the point I have designated in either of these two sections, or at the point designated by Judge Daly; but I think it is proper that there should be somewhere in that article a provision conferring that power on a local officer.

Mr. SEAVER—I would suggest to the gentle-

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man from Ontario [Mr. Chesebro] that his amendment could be inserted in the eighteenth or twentieth section, in both or either. They confer on the Legislature sufficient power to grant this authority, and the conferring of it can be left to the Legislature better than to insert it in the Constitution.

The question was put on the amendment of Mr. Chesebro, and it was declared lost.

Mr. LAPHAM—I move a reconsideration of the vote on the amendment offered by me to section 28, and ask that that motion lie on the table

The PRESIDENT—The motion will lie on the table under the rule.

Mr. COMSTOCK—I move that when this article is completed it be referred back to the Judiciary Committee to report complete. I am under the impression that there is considerable to do in putting the work of the Convention in proper shape, and expressing the various provisions of this article in proper style. It is a long and complicated article, and, being myself a member, both of the Judiciary Committee and the Committee on Revision, I may, perhaps, be allowed to say that I think the Judiciary Committee, the best constituted, on the whole, to do the remaining work on this article; and I would also add that the Committee on Revision concur in this disposition of the subject. I therefore move that it be referred back to that committee.

Mr. E. BROOKS—I hope the gentleman will change the phraseology of his motion that it be referred to the Committee on the Judiciary for revision, so as to complete the work in that respect.

Mr. COMSTOCK—That is what I mean.

Mr. FOLGER—I move to amend the motion so that the report shall first be printed.

Mr. COMSTOCK—I accept that amendment.

The question was then put on the adoption of the motion of Mr. Comstock, and it was declared carried.

Mr. MERRITT—I move the Convention do now adjourn.

The question being put on the motion of Mr. Merritt, it was declared carried.

So the Convention adjourned.

WEDNESDAY, January 15, 1868.

The Convention met pursuant to adjournment.

Prayer was offered by the Rev. Dr. SPRAGUE.

The Journal of yesterday was read and approved.

Mr. HARRIS presented four memorials praying for the abolition of the Board of Regents.

Which were referred to the Committee of the Whole.

Mr. HARRIS—I desire to embrace this opportunity to make a communication to the members of this Convention in behalf of the mayor of this city. He has a very convenient office in this building, in the south-west corner, on the first floor, at the right hand of members as they enter the hall. He has asked me to tender, for him, to the members of this Convention the use of that room, while they are engaged in the discharge of their duties here. It will be found a very convenient room, well fitted up and with ample accommodations for writing, and for the meeting of committees. It gives me very great pleasure to be the organ of this communication from Mayor Thacher, who has been generous and unwearied in his efforts to provide for the comforts and conveniences of this Convention.

Mr. E. BROOKS—I move that the offer of the mayor of this city be accepted, and that the thanks of this Convention be returned for the same.

The question was put on the motion of Mr. Brooks, and it was declared carried.

The PRESIDENT presented a communication from the New York Institution for the Deaf and Dumb, signed by the Secretary, stating that no memorial to the Constitutional Convention praying for the abolition of the Board of Regents had ever been signed by the directors of that institution.

Which was referred to the Committee of the Whole.

The PRESIDENT announced the special order of the day to be the consideration of the report of the Committee on the Powers and Duties of the Legislature.

Mr. STRATTON—I do not see the chairman of that committee here. This report was laid over once before on account of his absence, and I move that it be now passed for the purpose of taking up the report of the Committee on Charities.

The question was put on the motion of Mr. Stratton, and it was declared carried.

The Convention then resolved itself into Committee of the Whole on the report of the Committee on Charities and Charitable Institutions, Mr. OPDYKE, of New York, in the chair

The SECRETARY read the first section of the report as follows:

SEC. 1. The Legislature shall establish a board of commissioners of charities, consisting of eight persons, a majority of whom shall constitute a quorum who shall have power to visit, inspect, and to require reports from charitable institutions of every nature and description whatever, whether established by individuals, or supported or aided by the State, except religious organizations of a sectarian character, penal and correctional institutions, and educational institutions otherwise controlled by law. Such board shall report to the Legislature. It shall also give notice to the Attorney-General of any breach of trust in the management of such institutions or of their funds, who shall thereupon refer the question of such breach of trust to the proper court. The members of such board shall be appointed by the Governor with the consent of the Senate. Their term of office shall be eight years, and they shall be so classified that one shall go out of office in each year.

Mr. E. BROOKS—We have now reached in the course of our deliberations the article upon charities and I shall so far depart from the usual custom of this body, and from my own uniform practice, as a member of it, as to read what I propose to state in defense of the article now under consideration. I ought, perhaps, to make no apology for this, because in the discussion of a subject of so much importance, a subject which has received from time to time the consideration of this

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body, and which has received, in a large degree the attention of the State, I think that in preparing myself as I have, I do no more than justice to the Convention itself, as I have endeavored to do justice to the subject under consideration. When we assembled last summer, and almost from the day we came until our return here in November, we were met by petitions, headed in large black letters with the question, "Shall the State support the churches?" and complaining, as "tax payers of New York," that the people's money had been expended in vast amounts for purely sectarian purposes. These petitions had their origin in party organizations in the city of New York. They have been, and are still, scattered all over the State, and have produced in the minds of the people that natural fruit which springs forth from sectarian hate and sectional prejudice, as between town and country. There is hardly a town in the State which has not sent one or more of these petitions to this body, and it is fair to suppose that both the reports of the Committee on Finance and of the Committee on the Powers and Duties of the Legislature, each of them adverse to charitable appropriations, were more or less influenced by the record made. Be this as it may, the reports referred to were made in the presumption that the State had been guilty of great wrong in its grants of money for public and private charity.

CHURCH AND STATE.

I shall not discuss at any length the relations which, in a government like ours, the State bears to the church, for this is one of the subjects noticed, but if it be any gratification to the thousands of citizens who have sent their memorials to this body, I am prepared to answer their question in the negative. The State ought not to support the churches, and it ought not to make donations for purely sectarian purposes. And having answered this question, let me add that it is also unworthy of a State to deny to any class of needy people the State's aid, because the recipients of its bounty perchance belong to any one sect or to no sect; and I may also add that it is also unworthy of "tax payers," and all others, to incite the fury of the State against any sect or party on account of its religious faith. The history of the old world—the long and bloody feuds between Scotland and England, England and Ireland, between the Catholic and Protestant French—an incident of which was the massacre of St. Bartholomew—the wars between Spain and the Netherlands, Spain and the Ottoman Empire, all of which most painfully recall the time of Charles of Spain, Catharine de Medici, Queen Elizabeth, Alva, Philip, Pope Gregory II, Mary of Scotland, and, indeed, all history, ancient and modern, where governments are founded alone upon sectarian faith, are lessons for our own and all times. There is, I know, a party springing up in the land which reasons that the church is the corner stone of all civil governments, and, therefore, that the civil government is bound to recognize the church. We are even called atheistical because God is not recognized by name in the Federal and State constitutions. Such complainants forget that the church is of God and for the people and forms no part of the machinery of political government. The old world church history, from the reign of Constantine to the present time, the days of State tithes and all other State exactions of a religious or semi-religious character, show how uncongenial such a system would be in our own land. Ten thousand feuds and wars abroad warn us against all such alliances. But few except the ancient Jews, and they because they had one King in Heaven, and the so-called Fifth-monarchy men, ever held to the doctrine that even the saints were not subject to earthly government, and these precedents rather warn us against such folly, than attract us by any thing either safe or wise for our imitation. It is also said that the church or christianity, is more the protector and supporter of the government than the government is of it; but if it be so, this fact does not change the truth I have stated, nor the duty of complete separation. The federal Constitution, as the supreme law of the land, forbids the bans and should forbid them now and forever. The moral relations between the two are well set forth in the farewell address of Washington, when he reasons that "the teachings of the church are of immense benefit to civil government; that virtue is indispensable to a free, republican State, and that morality is sustained and rendered effective by the sanction of religion;" but it is nowhere added that the two should be combined in one, as in Rome, Russia, Turkey, or even in England. "Reason and experience," he adds, "both forbid us to expect that national morality can prevail in exclusion of religious principles." But, sir, we may agree with the spirit of the petitioners, that it is not for the State to favor sects nor to sit in judgment upon religious tenets or opinions; yet the very complainants who remonstrate against sectarian charities, are themselves all of some sect and party, and the complaint, I think, is not so much that money is expended, as that, perhaps, those not of the sect of the signers get more than their share of this money. By and by I shall show that even the charges made have so little foundation in truth as to reflect rather upon the accusers than the accused. In the mean time let me address a few words to those who would refuse appropriations to men, women and children of the Roman Catholic faith. Those who know my antecedents will not accuse me of any undue partiality for the adherents of this church. I would give them no advantage over others, and I would do them no wrong by discriminations against them, and, least of all, in dispensing charity, would I inquire the religious faith of any who need assistance. All true charity, private and public, is eminently catholic and free from sectarianism. Not long ago it was determined in England: First, that no Roman Catholic should hold a seat in parliament; and secondly, that no Jew should be seated there; and it is to the credit of Thomas Arnold and other eminent English Protestants, that they fought and partially fought down this principle of exclusion. To the petitioners to this Convention who oppose appropriations for Roman Catholics, and to all concurring with them, I advance the argument then used, for sectarianism appears here as it did in England:

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1. That it is the duty of every Englishman (American let me say) to support the just claims of the Roman Catholics of Ireland (the United States) even at the hazard of injuring the Protestant establishment, because these claims cannot be rejected without great injustice, and it is a want of faith in God and an unholy zeal to think that He can be served by injustice, or to guard against contingent evil by committing wrong.

2. That as the path of duty is the path of wisdom, so the granting of the Catholic claims, to which we are bound as a plain point of duty, will in all human probability greatly benefit the cause of Christianity.

Let us hope also that those who think it right to grant the federal money in almost unlimited sums, raised by a tax upon the whole people, even for three or four millions of emancipated slaves at the South, will not regard it as a great wrong to extend, under proper safeguards, some limited relief to the Celtic race whose lot is cast among ourselves.

It was, I know, once held by Lord Berley that the Catholics of Ireland were not the Irish, and that the Protestants were. Practically in law, through the power of an established church and by force of conquest, this was true, but in equity and justice it was never true, and we to-day behold the fruits of this old error in the civil commotion which reigns throughout Ireland and all over the now divided if not disunited Kingdom of Great Britain.

If, sir, this were the time and place, I might show how, step by step, Ireland has declined in population, thrift, and prosperity, and how the United States, in the material interests of the country, have been benefited by the change. Until one hundred years ago this very year a Roman Catholic was forbidden to purchase property in his own country. The reign of Henry VIII, Elizabeth, and on to 1768, the government was one of pure force, and not at all to be commended. History always is rightfully called philosophy, teaching by example, and let it teach us. But I pause, and will come directly to the subject of

SECTARIAN CHARITIES.

It is no doubt wise to be of those who are

> "Slaves to no sect—who take no private road,
> But look through nature up to nature's God."

Yet, while discarding State and Church as combinations, we must remember that there can be no true charity where all religion is excluded—since a pure charity is the very essence of practical Christianity, though no necessary part of what in the State is called "a religious establishment." Each member of a family, and every family, are a part of the State, whether rich or poor. The petitioners to this body seem to regard Roman Catholics solely in the light of sectarians, and in this they err, just as the people in England erred, when, in the reign of King Charles, they declared that dissent from the Catholic Church was sectarianism. Men may be Roman Catholics, and something more. I lay it down as an axiom, sir, for which there is the highest authority, that to enforce human duties by divine obligations, is not sectarian.* There is nothing in English law, before or after the conquest, which excludes the Christian religion from the schools, or the policy of divine instruction in the diffusion of knowledge, and the opposite has generally been taught by men of the character of Payne and Volney. But, sir, some one, lawyer or logician, may ask, here, as did the lawyer who tempted Christ, "What is Christianity?" "What is the duty of the State?" or the more practical question, "Who is my neighbor?" and, happily, we have the answer at hand, from the lips of the Saviour himself. See Luke x: 30–37:

30. And Jesus answering said, A certain *man* went down from Jerusalem to Jericho, and fell among thieves, which stripped him of his raiment, and wounded *him*, and departed, leaving *him* half dead.

31. And by chance there came down a certain priest that way: and when he saw him, he passed by on the other side.

32. And likewise a Levite, when he was at the place, came and looked *on him*, and passed by on the other side.

33. But a certain Samaritan, as he journeyed, came where he was: and when he saw him, he had compassion *on him*,

34. And went to *him*, and bound up his wounds, pouring in oil and wine, and set him on his own beast, and brought him to an inn, and took care of him.

35. And on the morrow when he departed, he took out two pence, and gave *them* to the host, and said unto him, Take care of him: and whatsoever thou spendest more, when I come again, I will repay thee.

36. Which now of these three, thinkest thou was neighbour unto him that fell among the thieves?

37. And he said, He that shewed mercy on him. Then said Jesus unto him, Go, and do thou likewise.

In connection with this subject, and I am reminded of it by the petitions before us, I commend the arguments before the United States supreme court, many years gone by, in the Stephen Girard will case, as then and there presented. The liberal giver, in providing for his great charity school, in Philadelphia, declared that:

"No ecclesiastic, missionary, or minister of any sect whatever shall ever hold or exercise any station or duty whatever in said college, nor shall any such person ever be admitted for any purpose, or as a visitor, within the premises appropriated for said college."

The civilized world perhaps gives no more marked evidence of bigotry and intolerance than this. It is the very quintessence of sectarianism, and as bigoted and selfish as prejudice could possibly make it: and yet it comes from one who, if alive, would no doubt be shocked to be regarded in this light. Himself the very chief of a sectarianism all his own, and yet alarmed least, at some time, some minister of God, of some denomination, no matter what, should cross the threshold of his secular temple of learning, perhaps to read the Lord's prayer, perhaps to read from

*See Everett's Life and Speeches of Webster, vol. 6, p. 170.

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the prophets or apostles of old, or it may be only the record I have read, of Christ's sermon on the mount, which is covered all over, as with a mantle, with the spirit of true charity! By the terms of the will, not one word of religious solace, comfort or instruction can ever enter there, for the guidance of the young. The minister of God is met at the very doors of these marble walls with the insulting thought, "No admittance to ministers of the Gospel." I admit, sir, again and again, that sectarianism cannot be, must not be, supported by the State, nor must it, sir, if presented in the form of a true charity, be disowned by the State. Charity, which St. Paul makes the chief good, is scattered all over the Bible. It beams and shines there like the sun by day and the moon and stars by night. It is the very essence of the Christian religion, and, therefore, in a civilized country cannot be excluded in precept or practice, from any public or private institution. Again, sir. If you strike at one mode of religious worship, you strike at all. Your blows fall everywhere, and prostrate all whom they may reach. You must not suppose that asylums in New York, Westchester, Rochester or Buffalo, can be assailed upon the score of sectarianism, or Romanism, if you please, and protestant institutions like the two State houses of refuge, the institutions for the deaf and dumb, the blind, the children's aid societies, Five Points mission, hospitals for those of mature years and infant dependence, escape unscathed. All are so far protestant as to have protestant officers, protestant boards of trustees and directors, and a general protestant management and superintendence. This is true, sir, of all our main institutions, either criminal or for the maintenance of the poor. I have no fault to find with any of them, but be careful where you strike, or like Sampson, you may bring the whole temple at your feet, and destroy all in your zeal to prostrate those you dislike. The federal and State Constitutions know nothing of what abroad is called an established religion, and yet the great many in the State and federal governments are pre-eminently protestant, happily not of any one prevailing sect, but sufficiently united to prevent all innovations upon the rights of conscience and of private judgment. I recall here, sir, the words of Benjamin Franklin in the first revolutionary Congress, where for some weeks all business was suspended by the zeal and heat of party men, and where, too, all was finally hushed into a peaceful calm by the successful motion of the statesman and philosopher in his declaration, uttered in words of deep impressiveness, and as timely as they were simple and touching. "I have lived, sir," said he to the presiding officer and assembly, "a long time, and the longer I live, the more convincing proofs I see of this truth, *that God governs in the affairs of men*," and his motion that henceforth "prayers imploring the assistance of Heaven and its blessings upon our deliberations, be held in this assembly every morning before we proceed to business," met with a unanimous assent. From that hour the public business proceeded as smoothly as the unrippled tide and with the calm and peace of an untroubled spirit. Samuel Adams, a so-called "independent" of that day, with his white hairs streaming over his shoulders, the very personification of patriotic fervor, seconded Franklin's motion, as upon another occasion of hardly less interest, in the Continental Congress, old John Adams, also of Massachusetts, nominated George Washington of Virginia to be the commander-in-chief of the armies of the nation. Oh, sir, for one hour of those days of blessed memory in our present political life. Now, sir, if all this seems foreign to any of the objects of this Convention, let me answer that we are forming the fundamental law of the greatest State of the Union, and that what we do here may not only become our law, but, as in the past, a law also for other American States. The State, federal and in the form of commonwealths, let me also say, has no superior power. It is indeed, the very essence of all earthly power. It is a principle laid down by Aristotle, and it is as enduring as time, that the object of the State is the happiness of society, happiness consisting both in physical and moral good, and more in the latter than in the former. Warburton, the moralist, wedded as he was to the expediency of an established religion, also held to the doctrine that the sole object of political power is the conservation of body and of goods. To say that the State has nothing to do with religion, makes it atheistical, and that education and charity form no part of its duties, makes it barbarian. To declare also that all State duties look only to the protection of individual property, or what are called the rights of society, makes it but little more than material. The State takes life, limb, time as well as property and money, to maintain its power and supremacy. It makes war, fires towns and ships, incarcerates in dungeons, abridges liberty, and punishes whom the law declares worthy of punishment, and often without discrimination of right. Can it do all this and do nothing to minister to the souls and bodies of those who are diseased, infirm, naked and hungry? Is a sermon like that of Christ from the mountain, beginning with so many blessings upon the poor in spirit, the meek, the pure in heart, the merciful, with so many wise reasons for a good life, the very essence of which is "give to him that asketh thee;" which also says the poor are always with us, which dwells alike upon the manner and virtue of alms giving, which admonishes us that our Father in Heaven feeds the fowls of the air and clothes the lilies and grass of the field, and will, therefore, much sooner feed and clothe the creatures of His hand, meant only for the pulpit and the fireside? If so, to what end do our daily labors begin with prayer here and elsewhere? To what end have men always made provision for the poor by the invocation of prayers? I have not so learned the duties of a State. I see more reason in the words I have read, and in those of the eminent teacher of the New Testament, who said: "Though I speak with the tongue of men and of angels and have not charity, I am become as sounding brass and a tinkling cymbal." If, too, a poor slave like Terence could give utterance to this generous sentiment: "*Homo sum, nil humani alienum puto*" —the State cannot wholly ignore the claims of any who are under its government. Some there are, I know, who for State or private reasons,

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would turn away all applicants asking State assistance. They see no power — or, if power, no substantial good—in grants made by the Legislature or authorized by a Constitutional Convention. Those needing alms they would turn over to the cold charities of the world. Over all legislative deliberations and over the State treasury they would place—as over the gates of Paradise after the fall of our first parents — that flaming sword, guarded by the Cherubim, which turned every way to keep the tree of life. Sir, I would create no such obstruction. In that line we have gone far enough—too far in my judgment — in the restrictions already placed in the financial article. I would rather, under the restrictions and regulations before you from the Committee on Charitable Institutions—"Open wide the gates, not with harsh and grating sound, but on golden hinges turning"—so that all who really require the State's assistance shall receive it, and in some manner best suited to their own necessities and the means of the State; always remembering the truth of all of God's poor, and especially of his poor children, how true it is that—

> The child whom many father's share,
> Has seldom known a father's care."

The federal government, sir, has given to Greece, to Ireland, and to the States at large, frequent appropriations of money. The nucleus of our school fund is a federal grant. This State also gave to Kansas, in the day of trouble, by a direct appropriation of money. What we waste yearly is more than equal to all the demands upon the treasury for ordinary charities. What is expended upon State printing alone is much greater than what is asked for all your hospitals, asylums and orphan homes. One-sixteenth of a mill upon a very low valuation of property is the average expended for the last twenty years upon this class of charities, and a tax of one-fourth of a mill would pay for every publicly supported and State aided charity in the Commonwealth, and for all special grants for education. But, Mr. Chairman, let me analyze the objections as they have appeared, or as they may appear in the course of this discussion. And first, of the nice distinction between charity in a State, or legal sense, and in the sense in which it is a private benevolence. It is said that it is not right to tax the people for charity; but this depends upon contingencies. If the charity is of a public nature the tax paid for it is right. If partly public and partly private, the tax is right to the extent of the aid for public purposes.

2. The duty of the State is the protection of the people, and to develop through wholesome laws whatever may contribute to that end—of course, with proper restrictions.

3. Religious institutions, though charitable in one sense, are something apart from State or from private charities. They are neither to be supported nor opposed *per se* in the organic law, because, as already said, the spirit of the Constitution forbids the union of Church and State. Congress, in its early history, imported twenty thousand copies of the Bible from Scotland and Holland to supply deficiencies in the Word of God, but this would not be tolerated, nor is it necessary, as we send Bibles all over the world.

4. Though charity *begins* at home, there is no reason why it should not travel abroad—at least from the Capitol here to all the people in the State.

5. There is a maxim, applying as well to the State as to the people, which says, "He gives most who gives in proportion to his circumstances, rather than he who gives absolutely the most." The State is to discriminate and see that it gets value for value, and this is just what your committee propose in its recommendations.

6. Men, in following the vices which lead to prison and to death, first endure, then pity, then embrace, and as the State has finally to pay the cost of all this, so in the opposite direction men may be kept from the embrace of crime by those remedial blessings found in institutions for education, for reform and in hospitals for the sick. In two years, 1865, '66, 23,681 persons were convicted in the New York courts of special sessions alone. Shall we move on in the same rut, increasing in crime as we increase in years? or shall we try to diminish the causes of offense, and thereby the number of offenses? If not, then indeed was the poet right when he said—

> "They who know the most must mourn the deepest,
> The tree of knowledge is not the tree of life."

And Solomon, too, when he declared that "he that increases in knowledge increaseth in sorrow."

7. But it may be said, in justice to other claims, that States cannot be governed by laws of benevolence. It has been said by my friend from Rockland [Mr. Conger], that money raised for government must be expended for government. Granted. What, then, is government? Is it the Capitol we have left? the State Hall near by? Is it our dead or living statutes? Is it alone 3,000 miles of railroad and 1,000 miles of canals—the $100,000,000 received for canal tolls—the $92,000,000 of legal interest upon the canals? Or is it our system of inland commerce, or our foreign commerce, as connected with boards of emigration—or, to pass to higher themes, is it alone systems of law and jurisprudence, subjects of taxation, legislative enactments, or the execution of the laws? All these, sir, are but parts of the State, and not its best parts, either. The supreme law is the Constitution, the supreme source of political power is the people of the State, and the greatest good is whatever contributes most to the general welfare.

"We, the people of the United States," is the beginning of the federal Constitution. "We, the people of the State of New York," is the beginning of the State Constitution. The people, then, are the government, and the power they authorize through the organic law is not only theirs, but they are the best judges of what is right. All governments, from the foundation of the world, have recognized the duty of the State to the poor. Charity, in deeds, and in noble sentiments put in practice, is a part, if not the best part, of a well-constituted commonwealth, and of a free and intelligent people. Some States, as we know, go so far as to have a State religion of their own, as in Great Britain, where the Church establishment

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makes, most unjustly, sectarians of all who, as in Scotland, belong to the Presbyterian faith, and in Ireland to the Roman Catholic Church. So the Turks adhere to their system of Moslem worship, Russia and Greece to the Greek Church, Northern Germany and other States to the Lutheran Church. The United States government is, happily, free from all these alliances, but they are not free from obligations imposed by justice, morality, society, suffering, and, in a sentence, the requirements of the people. Let us now, in brief, consider

WHAT CAUSES POVERTY.

1. Often it is ourselves, but almost as frequently it is the State. The federal government, by wars, which, as at present, inflate and expand the currency, demoralize the people, and which in the end leave men like a ship which has passed through a hurricane at sea, torn, wrecked, and greatly disabled.

2. By laws through which often the rich are made richer, and the poor poorer, through monopolies, tariffs, partial legislation, as in exemptions of class property from taxes, by driving small tradesmen out of the market. As "much will make more," so the little is apt to become less.

3. In the depreciation of labor by the protection of certain arts, inventions, machinery, favoring large capital, and throwing thousands out of employ.

4. Sometimes, even by a system of charity which compels those who have, to support those who have nothing. A rich man may be taxed even unto poverty.

5. In England the rich and poor are often a distinct class in language. The one class are taught of books and of the schools, while the other almost speak the Saxon tongue of their ancestors. We must be careful here to prevent all such distinctions. Let us now look to

THE REFORMS NEEDED.

1. There must be a better character of superintendents in our public and private institutions. The recent exposures at Rochester, in this State, in Paterson, N. J., and in the State of Illinois, in the treatment of the insane, call for a wise system of reform. There must be fewer employed for mere hire, and more from good will.

2. The cities should be cleared of bad boys, if possible. Of this number, 35,000 are reported in New York city alone. They do not like the country, and they do not like any system of farm labor, or any coercive occupation which takes them from the city.

3. Some place, too, is needed between the house of refuge and the penitentiary, for those between, say seventeen and twenty-one years of age, and these should be taught trades, or sent to an institution like that of the Methay Agricultural School in France, where of 856 inmates, 223 joined the army, and where large numbers take to the sea, and finally to mechanical trades. If the pursuits common to country life are not liked, let the inmates be compelled to do something toward self-maintenance. If there are no moral reasons for pressing these subjects upon the Convention, ample cause for doing so is found in the economy of what is proposed.

OUR COMMON SCHOOLS

cost a tax of one mill and a quarter, and the Legislature increased this tax last year about half a million of dollars, though the people were paying two millions per annum before. In New York city alone, $2,900,000 is raised this year for school purposes. These are noble institutions, where all are received from the age of five to the age of twenty-one years. They provide instruction for between nine hundred thousand and one million of children annually, besides some 26,400 taught in our academies, and nearly 1,000 in our colleges. The rate bill in twenty years has produced $20,627,426, while the school property in the State is valued at $12,254,957, the cities owning $6,720,535, and the counties $5,534,422. Nobody proposes to destroy this system, though many believe the tax might be more equitably levied than it is.

OUR STATE PRISONS

have cost the people in twenty years $5,340,372, and the following excess above receipts:

At Auburn,	$294,229 86
At Sing Sing,	1,192,964 55
At Clinton,	727,955 03
A total at the three prisons of,	$2,215,099 43
And adding salaries, traveling expenses, etc., a total cost to the people in these prisons for twenty years, beyond all receipts,	$2,733,112 54

Each convict at Sing Sing, for twenty years, cost annually $1,000; at Auburn, same time, $690; at Clinton, same time, $296; average number in all the prisons for 20 years, 1,926; total average cost of each prisoner at the three prisons, above earnings, for 20 years, $1,376.19. The wretched mismanagement of these institutions is proved from the fact that at the penitentiary in this city, where the sentences are short (from three months to ten days) and where criminals are employed at a disadvantage, they earn in excess of their support $20.08 each. I have read with great interest, the report of the Committee on Prisons on this subject, and commend its statements of fact to the members of the Convention, as it shows where enough may be saved annually to support nearly every hospital, asylum and academy in the State. It is to the credit of the prison association that in twenty years it has aided morally and mentally no less than 130,000 persons, and in doing so, it has no doubt saved large sums to the Commonwealth. Let me now briefly give some conclusions drawn from the reports of others before us.

IMMIGRANTS FROM ABROAD.

In twenty years the returns show the following results:

Arrived,	3,833,574
Cared for,	1,027,953
Relieved by counties,	121,159

for which the counties received $1,000,000, from head money imposed upon the immigrants, which is in no sense a State tax. These people have paid into the commissioners' fund, in twenty years, some $5,373,861, and foreigners, as they

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are, let us remember this when disposed to complain of the cost to which sometimes as a class they put the State.

GENERAL RECAPITULATION OF 20 YEARS' EXPENSE.

Institution for Deaf and Dumb,	$899,445 99
Institution for Blind,	496,487 83
State Institution for Blind,	31,687 59
Juvenile Delinquents in New York,	647,691 69
State Agricultural College,	47,850 00
State Normal School,	235,064 00
Juvenile Delinquents in Rochester,	567,315 65
State Lunatic Asylum,	484,160 52
The Asylum for Idiots,	344,904 56
Willard Asylum for the Insane,	65,262 31
Academies,	1,144,661 72
Orphan Asylums, etc.,	823,289 53
Hospitals, etc.,	617,190 16
Dispensaries,	142,579 05
Colleges, Universities, etc.,	155,769 91
Miscellaneous,	218,306 80
Total,	$6,920,881 91

I come now to

THE NEW YORK POOR-HOUSES.

From the official documents before us I condense these facts:

Expense of town and county poor,	$2,327,060
Expense in temporary relief,	765,640
Number of persons aided,	265,168
County paupers aided,	242,542
Number of persons temporarily relieved,	220,294
Of 33,963 received, there was Dec. 31, 1865,	14,321
The average weekly expense of each pauper,	1.12½
Amount received from pauper labor,	34,055

BIRTHPLACES OF THE POOR.

United States,	94,967
Ireland,	132,970
Germany,	25,331
England,	5,360

Besides those from Scotland, France, Canada, and elsewhere.

The native females over males were,	46,160
Irish females over males,	21,518
Of the children under sixteen years, the total number in the poor-houses was,	26,251

CAUSES OF PAUPERISM.

Under this head, we have a total in persons of 296,896, with an excess of 8,346 males. The more direct cause is intemperance, and of these there are reported:

Males,	15,586
Females,	9,723

besides 7,995 children of intemperate parents, and 1,469 wives of intemperate husbands, and the very natural sequence of 1,183 cases of debauchery.

There is also before me another and natural record from the above of 510 illegitimate children, and 428 parents born out of wedlock. Old age, children with poor parents, orphans, etc., also furnish their sad record in the general distress of poverty and crime; the whole footing up:

Males,	56,460
Females,	103,947

There are other institutions already named which deserve more than a passing notice. In the New York hospital more than sixty-two and a half per cent are seamen, and in no just sense, therefore, can such an institution be regarded as a local charity. In the foundling hospital, a large majority of the unfortunate mothers went from the country to the city of New York. In the nursery and child's hospital, an institution akin to this, and almost a part of it, most of the mothers are foreign born, but not a few come from other States, and the interior counties of this State. For a dozen years and more, sir, my warmest sympathies have been enlisted in this institution, perhaps from the agency I had in securing $10,000 from the State for its first edifice, perhaps, as one naturally feels a deep interest in those he serves, and I hope mainly from this consideration, that no doors were then open to receive the infant young, and perhaps, also, from the fact that these helpless little ones were, and are, the victims of one of the greatest sins known to the civilized world. I shall ask no apology for pausing to present the claims of such an institution upon the Convention and the people. In the State, before the foundation of this charity, infant children, confined in institutions supported by local governments, disappeared almost as rapidly as the snow beneath the rain. The mortality of infants has been frightful, the crime of child murder appalling and the effect upon society alarming.

THE NURSERY AND CHILD'S HOSPITAL

had its origin in a state of facts deeply interesting in themselves, but mainly in the circumstance that the destitute mother of, if possible, its still more destitute offspring, was obliged to give the nutriment of its own bosom to the child of a rich woman, while its own little one was almost starved, literally clothed in filth and rags, and consigned to one of the most wretched tenement houses in the city, and cared for by still more wretched inmates, at a cost of a few shillings a week. Imagine, sir, the child of this poor woman literally buried in a bundle of rags, under a miserable bed, on which one child lay dead of small-pox, with its mother beside it, all as poor as poverty could make the scene, and the absent mother living in elegance and luxury, and surrounded by every blessing that wealth, art and taste could bestow. You will cry out 'Oh, most unnatural parent, thus to desert its own flesh and blood!" And the spirit of a still greater indignation, perhaps, will rise within you when I add that the mother, who has thus parted with her own little one, had come under a compact not to see her own child while feeding the babe who was now dandled in all the comforts which abundance could give. But pause for a moment, let me beg you, in your condemnation. To be dependent upon charity is to be miserable, while the rich are a law unto themselves. The poor must live and often have no choice of living, and to the honor of the mother I have named, tears fell like rain from her eyes as she contemplated this contrast and the wide and deep gulf between the child she nursed and the child she brought into the world. It was this incident, sir, seen by one good woman and told to another in fashionable life, but full of all the instincts of the truest womanhood that led first, and mainly by her intelligent, earnest zeal and labor, to the establishment of a Nursery Hospital, and secondly to the Foundling Hospital, now in early but successful organization in the city of New York. I told you the other day of the origin of the Idiotic Asylum in this State, and also of its wonderful suc-

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cess in giving intellect to the enfeebled mind, strength to the feeble knees, comeliness and beauty to human forms which were once most horrible to behold. Such an institution redeems misfortune of half its terrors, the human heart of half its sorrows, and shows in how many ways God tempers the wind to His shorn lambs. So of the institution for the education of the deaf and dumb. When I first heard of it, practically, it was through one of the most impressive lessons ever taught by the young, not excepting the little children which the Saviour of the world took in His own arms and blessed. The common question put by a visitor to a child standing at the black-board was this: "My child, who made you?" No common answer came to this common question, but one written in a fair, full, confident handwriting upon the black-board, and here it is: "In the beginning God created the heavens and the earth." Then came the second question: "What do you know of the Saviour of the world?" The child paused a second, and then, its countenance full of light, wrote out these impressive words: "It is a faithful saying, and worthy of all acceptation, that Jesus Christ came into the world to save sinners." The astonished visitor looked in wonder upon this mature teacher, though of youthful years, and then ventured upon the most trying question of all: "Why were you born deaf and dumb, while God has blessed me with hearing and with speech?" The child's countenance, for a second of time, but no more, seemed saddened by the question, and then the little hands wrote out these words, worthy to be inscribed in letters of light upon every sorrowing mind and heart in the world: "Even so, Father, for so it seemeth good in thy sight." How true it is of these people, whose intellectual capabilities are almost unsurpassed, and who owe so much to God and the State, that they have neither language nor speech, but their voice is heard! Two thousand deaf and dumb children have been educated at this institution since 1817, and teachers and pupils are found to-day on the shores of the Pacific, and in about every State of the Union. One more illustration, and this of the beginning of one of our State institutions, and I will relieve your patience of so many details.

THE NEW YORK HOUSE OF REFUGE

had its origin in the defense of a fine-looking boy, of respectable parents and some fourteen years old. He was put upon trial before the mayor for stealing a bird, and the counsel for the boy, Mr. Girard, in his history of the case, says:

"I took every legal ground in the defense that my ingenuity could devise, that a bird was an animal *ferœ naturæ*, and could not be considered in law as property, and consequently could not be the subject of larceny, though taken from a cage. My legal grounds were overruled by the mayor, who told me I might go to the jury, to see if they could find any good reason why the punishment of the law awarded to theft should not be visited upon the young offender. I then urged upon the jury that, if they convicted this youth for this, his first offense, and sent him to prison, his ruin for life would be the inevitable consequence; that as there was little or no separation in our prisons, of the young from the old offenders, imprisonment, by a thoughtless act of depredation upon property, would expose him to the corrupting intercourse of old and hardened offenders, and, at the termination of his imprisonment, he would graduate from our prison an adept at crime. The force of this plea prevailed, and the jury, having a loophole through which their consciences might creep, found him not guilty. Mark the sequel. This boy had been badly brought up; no good seed had been planted in his breast, and no good examples at home had been held out to him to follow. He was bad in grain; and but a few years ago I read in the public journals that he had died in prison—a felon, confined for stealing in mature life, and that while in prison a fortune of $80,000 had been left to him."

It was the belief of counsel that a house of refuge, with proper moral and religious education, would have eradicated this vice and worked a complete reform; and the incident I have named led to the establishment of the New York House of Refuge. It has cost the State, it is true, nearly $650,000 in twenty years, but it has saved ten times this expense, first, by keeping hundreds of boys from the penitentiary; and, secondly, by making them good citizens. Let me add, just here, and upon the evidence of a full and free discussion in England and in this country, that it is now generally admitted that one dollar is more effectually bestowed in preventing pauperism than ten in relieving it; and, to quote one of the reports before me, "that the public energies, and funds had much better be directed to the saving individuals from mendicity, than in building edifices and raising funds to support them as paupers." It is also true, that no taxes are more cheerfully paid than those which prevent crime, and that this class of charities result in the double advantage of securing a moral and material good in the community. I attribute not a little of the increased vice of the day to the absence of means of preventing it. You have seen what the three State prisons cost, but of the four score jails in the State, some of them in their inmates and by their mismanagement a disgrace to civilization, the same story of waste and excess may be told. Carlyle tells of a poor man in London, who could get no one to recognize his claims till he had taken fever, spread the infection, died, killed a dozen of his well-to-do neighbors, and at last in this way managed to establish the fact of his humanity. It is the same with children. They will make it abundantly evident, in time, in one way or another, that society cannot afford to neglect them—and it is a costly way of doing this to employ policemen, prisons, judges, and very possibly the hangman at last. These poor pinched-faced little dependents, tumbling in the gutter, swearing, thieving, mischief making, cannot be ignored, and must not be despised. Children, sir, now go to ruin by thousands because there are no parents to care for them, and as they are fatherless the State must to some extent act the part of a parent. We may pass by on the other side and put it off upon the priest, upon the Levite, and upon the neighbor, but the work must be done by some one, and the important question is —"who shall do it?" Let it be done by the

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counties, says the honorable gentleman from Cayuga [Mr. Rathbun]. Let it be done by the towns, responds my friend from Montgomery [Mr. Baker]. *Let it be done by all*, is my answer, and by the State, in a manner regulated by law, so that none shall escape punishment who deserve punishment, nor any fail of mercy who deserve to be relieved. Let no one ask for bread only to receive a stone, for a fish to secure a serpent, for an egg to be offered a scorpion. It was by no such rebuff that the hungry were fed by the Giver of every good and perfect gift. The mercy of the father who forgave his prodigal son, who fell upon his neck, kissed him and wept, excited the anger and jealousy of the more deserving brother; but in our charities, for the evil they save, and the good they do, as with this forgiving father, it is enough for us to know that he who was lost is found, and he who was dead is alive again.

I wish, sir, it was in my power to picture that vision of the lazar house recorded by the immortal Milton, in the interview of Adam with the Archangel Michael:

* * * Wherein were laid
Numbers of all diseased; all maladies;
Convulsions, epilepsies, fierce catarrhs
And moonstruck madness, pining atrophy,
Marasmus and wide wasting pestilence.
Sights so deformed, what heart of rock could long
Dry-eyed behold; Adam could not, but wept,
Though not of woman born: compassion quelled
His best of man, and gave him up to tears,
A space, till firmer thoughts restrained excess.

Again, as we know, to some considerable extent, those of mature years are cared for, while the young are sacrificed by thousands. The report of your Committee on Charities shows how, even in New England, life is destroyed. Sir, there is no longer any danger of the fears of Malthus, that population will be increased faster than food can be provided for them. The Social Science Association in Boston, after carefully investigating the records in some towns in Massachusetts for two hundred years and over, whose history included from six to eight generations, found that families comprising the first three generations had an average of eight to ten children each; those of the second three between seven and eight; the fifth five, and the sixth less than three to each family. In the olden time the majority of married women had ten or twelve; now nearly ten per cent have absolutely no children there, and more than thirty per cent but one or two; while the average to each family is about three and a half! To be a prosperous state the birthrate should be one to every thirty of the population. Massachusetts formerly came up to this standard; from 1860 to 1865, of the native American population it was less than one to sixty. But in Old England, dogmatic and boastful as she is, it is the same, for their judicial statistics prove that the number of deceased infant children upon whom inquests were held in one year was 6,872. Of these, 5,523 were legitimate, and 1,349 were illegitimate, which would seem to disprove the assertion that illegitimate children are the usual subjects of infanticide. To this crying sin of child murder, I feel called upon to draw your attention. It is not new among us, but has grown with fearful rapidity. The comments of Addison upon it read like a lesson of to-day, though the punishment is mild now compared with what it was then, though now not one offender in a thousand is discovered. Says the Spectator:

"One does not know how to speak on such a subject without horror, but what multitudes of infants have been made away with by those who brought them into the world, and were afterward ashamed or unable to provide for them! There is scarcely an assizes where some unhappy wretch is not executed for the murder of a child. And how many more of these monsters of inhumanity may we suppose to be wholly undiscovered or cleared for want of legal evidence, not to mention those who by unnatural practices do in some measure defeat the intentions of Providence. * * It robs the commonwealth of its full number of citizens, and certainly deserves the utmost application and wisdom of a people to prevent it."

And Addison then points out the hospitals at Paris, Madrid, Lisbon and Rome for prevention, and he closes his one hundred and fifth paper by saying:

"This, I think, is a subject that deserves our most serious consideration, for which reason I hope I shall not be thought impertinent in laying it before my readers."

The waste of young life is also every way and everywhere alarming. In Great Britain, of 1,730,076 born in one year, 373,053 died. In New York, four-fifths of the mortality is of those under two years. In a series of years in the city of New York, of 552,539 deaths, 178,307 were under two years, and 222,618 under five years. In the ten years, from 1845 to 1856, of 228,355 who died, 110,887 were under five years, and until recently this ratio was upon the increase. And yet some of us daily thank God for our creation and preservation, as well as all the blessings of this life. The little waifs rest upon their mother earth like snow-flakes now falling around us, and disappear as soon, or they pass away as the morning mist before the breath of day.

"My heart leaps up when I behold
A rainbow in the sky;
So was it when my life began,
So is it now I am a man;
So let it be when I grow old,
Or let me die—
The child is father of the man."

The subject of infanticide brings me to the question of

FOUNDLING HOSPITALS,

as one of the proper remedies for the prevention of the evil. Since we have been in session I have regretted to hear these institutions assailed, and I deem it a duty to show, very briefly, the good and the evil they do. King Herod's order to go forth and slay the infants of Judea, like King Ptolemy's decree to destroy the children of the Jews is one of the marvels of history and revelation. So is the decree of the Tarquins to save only the male children and the eldest daughter. The old Roman law went so far as to say that children could be put to death at pleasure So also, the Spartan law to destroy weakly and deformed infants—a law even approved by Aristotle and Plato, and defended under the practice of Justinian. The Chinese destroy their off-

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spring without remorse and by tens of thousands. The Greenlander and the Esquimaux pay no regard to infant life, while the Mangua Bushman, when the mother dies, whose infant cannot find its natural nourishment, is burned with the mother. We do nothing, of course, like this in the United States, but how much better is a system which so orders, governs, or permits, as to take off by death 85 per cent of infant life, even when professedly cared for, and which beholds with almost indifference the destruction of thousands by literal sacrifice. In considering the subject of foundling hospitals, we must distinguish between those which are established in different countries. They are common to all Europe. The treasury of the Church in Rome supports 3,000 inmates yearly; Naples not less than 2,000, Madrid 4,000, Lisbon 3,000, and Moscow and St. Petersburg each about 25,000. In France, where there were 40,000 foundlings in 1784, there are now over 300,000. There, under the Code Napoleon, each arrondissement now maintains a separate hospital, instead of crowding the children all upon Paris, as was the case before 1811. But, sir, it is said foundling hospitals are nurseries for crime, and that the great majority in them are born out of wedlock. This is true of half the children of Sweden and of a portion of all Northern and Central Europe, but it is no argument against the existence of these institutions, unless we mean that children, because they are illegitimate, shall bear the double curse of a false parentage, and if possible the greater misfortune of being set adrift as upon a stormy sea without chart, compass or pilot to guide them. I shall not disguise the fact that in Italy illegitimate births have increased 100 per cent, and that the same is almost relatively true of Russia, Sweden and Germany. But, sir, against these truths let me also state the fact that there are no foundling hospitals in Scotland, and that their absence does not prevent an illicit life, but rather impels to further crimes, many infants there being either strangled, thrown into the river, or very commonly left at the doors of the church. Per contra, these institutions have existed in Dublin for more than a century, and yet seductions and criminal offenses are there branded as flagitious offenses. It is, as has been said, rather their absence than their presence, that has led to the commission of more serious crimes, such as intentional abortion, child murder, and all the evils—frequently death itself resulting to the woman who has no asylum in which to hide her shame and amend her life. But again, in Guthrie's Standard Geographical Work, it is stated that the Scottish women are most prone to infanticide. In France the famous turning table used for so many years is now falling into disuse. The frequent promises to shield from punishment, inculcates contempt for the most sacred law. France in this respect, encourages vice in the name of misfortune. There is another and better method which seeks light, in order to bestow the benefits of the State more wisely. In the nursery and child's hospital, the mother's sorrow is only told to one female in authority. The erring woman is surrounded by good influences, and encouraged instead of being shut out from all virtuous associations, and is in every way aided in obtaining the means of decent support. "Many women," says Fielding, in the character of Allworthy, "have become abandoned, and have sunk to the last degrees of vice, by being unable to retrieve the first slip"—a lesson eminently worthy of remembrance, study, and practice. The assertion that the foundling hospitals have only a tendency to promote licentiousness is but assertion, and one fact is worth a thousand theories. The evidence of the treasurer of the London institution is very conclusive on this subject. The history of one hundred and three girls, after leaving the hospital, is given very specifically. Of this number seventy-seven received, at the expiration of their apprenticeship in decent families, gratuities, varying from two to five guineas, for good conduct, such gratuities being awarded only on certificates of the employer. Four died, three became invalids or insane, seven forfeited the gratuity for obstinacy, without vice, three committed offenses, but afterward reformed, four never came for the gratuity, and of the whole number, one hundred and three, only three turned out bad characters. Two were taken out by their mothers, whose history is unknown. At the nursery, four have remained a year nursing their own infants, and obtained a certificate of excellent behavior, while more than eighty were placed in situations where they gave entire satisfaction. Several have been married and are leading virtuous lives. Comment on such facts but weakens their force, since no reformatory schools produce a more hopeful result. The evils of emigrant ships are often brought to our notice, and there also many hitherto virtuous girls have been ruined by violent and shameful intrigue and assault. It was not until the time of Vincent de Paul, in the 17th century, that the civil existence of foundlings was acknowledged, although foundling hospitals have been known since 1070. Louis XIV regarded their establishment as a Christian duty, because of the feebleness and misfortune of their inmates and because they might be useful in the country's service. The brilliant yet gentle Marie Antoinette took the deepest interest both in the mothers and their children, and founded, I believe, the first lying-in asylum in the old world, certainly the first one in France. The good they have done—and, sir, there is in this life hardly any good unmixed with evil—is almost beyond calculation. They have had both the support of the State and the labors and prayers of those sisters of mercy whose mission it is to visit the sick, to plunge into the infection of hospitals, to redeem vice of half its horrors and sorrow of half its grief, by giving to virtue its most dignified excellence and grace. One other subject is treated in the report of the Committee on Charities which I shall leave to the lawyers of the Convention and committee. It is that which relates to charitable gifts, devises and bequests. It proposes to make what is now inconstant and uncertain in the law permanent, and to remove, under proper limitations for the protection of families, all hinderances to the bestowment of individual wealth upon institutions of benevolence and learning; and this is the more necessary, since, if the recommendations herewith submitted are adopted, the State

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cannot hereafter make charitable donations except for purposes absolutely in the public interest and declared to be so by a board of State commissioners, and then only upon examination and evidence that what is asked for is really meritorious. Having thus, sir, discussed the question before us in all its relations to the State and the people, I now leave it to the Convention. You have it before you under the lights afforded by history, experience at home and abroad, by statistical facts, constitutional power, and public duty, and the wish neareast my heart to-day is, that I am not pleading in vain for a principle which even the least enlightened nations have esteemed it a privilege to maintain, and which no people, honoring God, serving the State, or respecting the misfortunes of their fellow men, can rightfully deny.

Mr. CURTIS—I wish to offer the following amendment to the first section:

The SECRETARY read the amendment as follows:

In section 1, line 3, after the word "shall," insert "not be members of one denomination, and five of whom shall—" so that it will read "the Legislature shall establish a board of commissioners of charities, consisting of eight persons, a majority of whom shall not be members of one religious denomination, and five of whom shall constitute a quorum, etc."

Mr. CURTIS—Of course, Mr. Chairman, should the recommendation suggested in my amendment prevail in the committee, I shall also propose a change in the second paragraph in the third section, which states that this proposed board "shall examine the circumstances of the case, and report the institutions claiming such aid as tends to relieve the State from expense with the amount of such relief, and that it is not religious or sectarian in its character, and that a majority of its managers are not members of one religious denomination." I presume it was the intention of the committee, since the Convention had already decided it would give aid only to institutions for education and charitable purposes, to avoid any possibility of connection between the State and the Church. In other words, they desire, as absolutely as possible, to do away with the influence of sectarian feeling in the management of State charities. I have listened with interest to the discourse which was pronounced by the chairman of the Committee on Charities [Mr. E. Brooks]. I think there is no question but that it is for the interest of the State to retain the power of charitable assistance in various directions, and that it is indispensable that that power of assistance should be supervised by a board having all the solemnity of the State behind it. But, sir, the committee will see that as the section now stands in the article reported, the eight persons who are to constitute this board may be of one religious denomination. There is no reason, so far as it appears in this section, why they should not be all Methodists, all Episcopalians, all Presbyterians or all Romanists. If such should, by any possibility, be the constitution of the State board, then, sir, the safeguard which is provided in the second paragraph in the third section, that no institution claiming to be religious shall have the majority of the members of one religious denomination, would unquestionably fail. Such a board would find ways enough to escape the limitation. If, however, we establish at the outset that this board shall be free from any sectarian bias, knowing that there are many charitable institutions which are of the greatest service although they are under sectarian management, it will be for the board so constituted in recommending State assistance, to report that such institutions although sectarian in management are not sectarian in purpose and tendency. I suppose, Mr. Chairman, from the great number of petitions which have been presented to the Convention upon this subject, that there is unquestionably, in the State of New York, which is essentially a Protestant State, an apprehension that the State aid has been given too much in one direction. Various statistics have been given to us to show that most of the local aid has been granted to institutions which are managed by the Roman Catholics. But, unquestionably, sir, if the State, as we have determined, is to aid charities, it cannot avoid, at least proportionately, helping those institutions which are under the care of the Roman Church. It is impossible not to recognize the fact, that the charitable foundations of the Roman Church are the most comprehensive, the most vigorous and the most efficient known in history. It is still further true, as the chairman of the committee has told us, that the great majority of those who must be relieved by State charities in certain sections of the State, are members of that church, and will naturally fall to the care of that church. I cannot stop to speak of the various forms of the charity of that church, but it is to one of its saints that civilization owes the institution of the sisters of charity, whose benign service is known even in the hospitals of other denominations, and any system which this State should adopt which should strike at the very root of such institutions would necessarily bring the State to this question, "Are you willing to do, absolutely and to the utmost, what is now done by the institutions already in existence?" I do not believe, sir, that the State is willing to do it. I believe that the experience of this State to be that of Massachusetts. Massachusetts, in the year 1863, established a board of charity. In the very first report which that board made, after looking over the whole ground, they announced that in their judgment the true policy of the State was to give assistance to the private foundations, of whatever sect, that already existed, rather than to establish new public institutions. All that we want is to subordinate all institutions which are managed by the various sects to the great purposes of charity, and to have a board so constituted that such institutions shall receive proper assistance.

Mr. SPENCER—It may be remembered, by some at least, that, when this report now under consideration was made, I took the opportunity, as a member of the committee, to dissent, not on the ground of any opposition to an organized system of charities as connected with the administration of the government of the State, but upon the ground that it was not only unnecessary, but

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that it was improper to embody it in a Constitution of the State; and the suggestion which has been made by the amendment of the gentleman from Richmond [Mr. Curtis] seems to demonstrate the impropriety and the impolicy of making a system of charities a part of the framework of the Constitution. It involves, under a constitutional provision, an inquiry into the religious opinions of those who may become public officers. Before the Governor can nominate, and before the Senate can assent to a nomination, there must be an examination in some form as to the religious opinions of those, or a part of those, at least, who are to become members of this proposed board. Now, has it ever been heard of before, in a form of government like ours, where religious opinions are tolerated, and where no man has any business whatever to inquire into the religious opinions of any other person, that such an inquiry should be made at least under the authority of the Constitution, in regard to the religious opinions of the proposed incumbent of an office? I submit there never has been such an instance.

Mr. E. BROOKS—Will my friend allow me a moment? The gentleman will bear witness that when this subject was discussed in the committee on charitable institutions, an amendment, such as has now been suggested by my colleague [Mr. Curtis], was adopted in committee; but to remove the various objections which the gentleman from Steuben [Mr. Spencer] has raised here, we thought proper to leave the selection of this commission to the Governor of the State and the Legislature, who have, in times past, undoubtedly made selections without regard to the religious opinions of commissioners, whereas the amendment of my colleague [Mr. Curtis] makes it necessarily offensive, in the way suggested by the gentleman now upon the floor [Mr. Spencer].

Mr. SPENCER—But looking farther through the article we find another provision, which makes it necessary, before any institution can receive aid from this board of charities, that there should still be an inquiry into the religious opinions of at least a majority of those under whom the institution is proposed to be conducted. And the whole subject is involved in the same difficulties from beginning to end. I do not propose to discuss at length the propriety of making this article a part of the Constitution at present, but the amendment of the gentleman from Richmond [Mr. Curtis] suggested this difficulty to my mind and I now present it here.

Mr. DUGANNE—I merely rise to ask the gentleman from Steuben [Mr. Spencer] if it is not already provided in the charter of the Cornell University that such qualifications should be necessary, in order to become a trustee of that insititution?

Mr. M. I. TOWNSEND—That is not in the constitution.

Mr. SPENCER—I do not know how that may be. I have not examined the charter of that institution. It is enough that the question is presented in that form here.

Mr. COMSTOCK—I have listened with attention, and with great interest, to the address of my honorable friend from Richmond [Mr. E. Brooks], a member of this committee, on the subject of charity in general. I have no difference with him in regard to his sentiments and his opinions on that general subject, but I think he will excuse me for saying that his address, able and interesting as it has been, has but a very remote, if any, relation whatever, to the constitutional article which is under consideration. I am under the impression, Mr. Chairman, that if we take up that article section by section, and endeavor to amend it and succeed in amending it in its various details—and it will certainly require manifold amendments—I say I am under the strong impression that when we get through with the work we shall come to the conclusion that it is not expedient for this Convention to meddle with the subject at all. I feel the importance, Mr. Chairman, of hastening forward to the close of the labors of this Convention. In regard to those subjects upon which the Convention must act, I am in favor of acting with deliberation and with care; but in regard to this subject, and to some others, in regard to which there is no call for us to act at all, I am in favor of an early and a summary disposition of them. I have risen, therefore, now, for the purpose of moving that this committee rise and report, to the end that the Convention may refuse leave to sit again, if it shall so please, and that this article may therefore be disposed of in that manner. In support of that motion I will detain the Convention for a short time upon the general subject involved in this article. The article is framed, I believe, with very imperfect conceptions of the existing state of the law, and it is proper, certainly, if we are to act upon the matter at all, that we should have some accurate notions of what the law of the State is on the subject of charity. I will make a few general observations upon that point. Whoever will look over the legislation of this State, from the origin of the State government to the present time, as I have had occasion to do in the course of my professional life, will find that there are in the State several hundred charitable institutions of almost every conceivable name and nature which are capable under the legislative authority to receive gifts and donations for benevolent, scientific and charitable purposes. You may find these institutions which have their origin in special acts of the legislature, in every corner of the State. You find them of a religious character, of a scientific character. You find hospitals and orphan asylums, benevolent and humane institutions of almost every conceivable kind, owing their existence to the special laws of the State, passed upon due application made to the legislative power for the charter of those institutions. Now, in the first place, any person of a charitable disposition can increase the endowment and the usefulness of any one of these institutions, within those wise and wholesome limitations and restraints which the legislative power has prescribed. But, in addition to this special legislation of the State, which is spread over its entire history from the origin of our government to the present time, there is a variety of general laws of the State for the founding of institutions for charity, learning and benevolence. As long ago, I think, as the year 1784, a general law was pass-

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ed for the incorporation of religious societies, with capacity within certain limits to take gifts and donations of property for the spreading of religion, and the dissemination of the Holy Scriptures, and religious learning of every description. That law has been amended from time to time, and it is now in force—it is now the law of the State, and there is not, probably, a town in this State which has not its institutions of that character, capable of receiving gifts for the purposes contemplated by those societies, and within the limitations which the Legislature has prescribed. We have general laws also for the foundation of library societies, for literary, scientific, charitable and benevolent societies of every description under which, without a special charter from the Legislature, corporations may be formed for these objects with power to take gifts under limitations which are very liberal in their character. I beg leave to call the attention of the committe to one of these general laws, under which a great many charitable societies have already been formed within the State. The acts of 1848 may be called our law of charitable uses. It provides that—

"Any five or more persons of full age, citizens of the United States, a majority of whom shall be citizens of this State, who shall desire to associate themselves for benevolent, charitable, scientific, or missionary purposes, may make, sign and acknowledge before any officer authorized to take the acknowledgment of deeds in this State and file in the office of the Secretary of State, and also in the office of the clerk of the county in which the business of such society is to be conducted, a certificate in writing, in which shall be stated the name or title by which such society shall be known in law, * * *."

To be approved by a judge of the supreme court, and when that certificate is filed the persons named in it become a corporation for the purpose indicated, whether literary, scientific, benevolent or charitable, with power to take real and personal property for the purposes of the incorporation. And it is provided that all the institutions formed under that law shall be subject to the visitations of the judges of the supreme court or of any person appointed by that court, and it contains a wise and wholesome restriction, providing that no person leaving a wife, or child, or parent, shall devise or bequeath to such institution or corporation, more than one-fourth of his estate. Now, Mr. Chairman, if any man is humanely disposed, and has a praiseworthy ambition to distinguish his name by doing something for the benefit of his race, he can look over this legislation of the State, and he will find ample opportunity and scope for his benevolent intentions. He can endow any one of the institutions of the State deriving their existence under its general or the special laws, and under the statute to which I have called the attention of the committee. He can found a new institution, and he can give it his own name, or any other name which he pleases, and having so founded it, according to the laws of the State, he may endow it in his life-time, or he may endow it by his last will and testament, under the limitations prescribed in the law. Such is in brief the law of charity in the State of New York, and it may be added that if the existing written laws of the State do not fully meet the views of any benevolent gentleman of wealth who desires to endow or to found a charitable institution, the right is always open to him to go to the Legislature and ask for a charter for that institution, and the charter will be granted, under such wise limitations as the law may prescribe. Such applications are always listened to with the greatest favor. This is the law of charity within the State of New York. Now, the grand purpose of the article which is under consideration is to establish another law of charity. The struggle has been going on in the courts of the State for some years, to determine the question whether, over and above, beyond, and outside of these written laws, any man, in disregard of the claims of family and kindred, in disregard of all the written laws of the State, and the wise limitation which they place upon gifts of this character may not devote the whole of his estate by will and testament to the founding of any institution or for any purpose whatsoever which the imagination of man can conceive, which may happen to suit his views or his caprice. I say that struggle has been going on in the courts of the State for some years, and the law has now become as well settled as it is on any other subject whatever, and the law now is that gifts to so-called charities, that is, public gifts, whatever their name or nature may be, as distinguished from private limitations of property, must be made, must take effect, and can only take effect, under and according to the written laws of the State. That has been the final judgment of the courts of this State, and it has been pronounced with so much caution, and care, and deliberation, that it may now be regarded as the irreversible judgment of the judicial branch of our government. Those who have failed to establish in the courts the law of charity in the State according to their peculiar views and notions, are now endeavoring to incorporate it into the Constitution of the State, and that is the great purpose of the article under consideration. Let me call the attention of the committee, for a moment, to this article. It begins by establishing a magnificent State board, to be called a board of charities, with power to visit and inspect the charitable institutions of the State of every nature, whether public or private. Now, sir, I am not aware of the necessity of placing in the Constitution any such power of visitation and examination. According to the laws to which I have called the attention of the committee, we have already ample power of visitation of these charities. There is not an incorporated charity in the State which is not, in the most full and absolute sense, responsible for its conduct to the courts of the State. It is expressly provided, moreover, that these institutions may be visited and examined by the supreme court, or any of its judges, or by any person appointed by that court. Any one, therefore, has only to make a complaint or a request to that tribunal for the visitation of a charity, and it will be visited and examined. It is provided in the second section of this article that any person or persons may establish or increase the endowment of a charitable institution for the support of

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the poor, the advancment of learning, or other lawful or public purposes. In short, any body may establish an institution for any lawful and public purpose. That is the plain English of the article. Now, sir, what is a lawful and a public purpose? It is here that we see the purpose to change the law in the manner that I have indicated. What is a lawful and a public purpose? To begin with, sir, what is a charity? I ask any gentleman who thinks himself competent, to define before this Convention what is and what is not a charity? In that country from which we derive most of our laws and institutions, charities are defined by a legislative enactment. Something like two hundred and fifty years ago, in the reign of Queen Elizabeth, an act of the British Parliament was passed, called the act of charitable uses, which defined precisely by an enumeration what were charities and gave them effect. That act is to-day in force, and is the foundation of the huge and complex system of charity law in England. That statute was repealed in this State soon after the formation of the first Constitution of this State, and it has never been re-enacted by the Legislature. It is not in force in this State. I ask again, therefore, what is a charity? As we have no statutory or legislative definition can any man tell me what is a charity? A donation to found a Protestant Episcopal church, most of us would regard as charitable, and as praiseworthy; but suppose another individual makes a donation by his last will and testament to establish a *post obit*, or a perpetual lamp, with a compensation to a priest to say prayers for the benefit of his soul and the souls of his ancestors forever. One of them is a charity of a Protestant complexion, the other is a charity of a Roman Catholic complexion, yet each of them under our Constitution has exactly the same merit, for by our written Constitutions all discrimination and preference between religious creeds and beliefs is forever abolished; and if one of these gifts is to be sustained without the written laws of the State, the other must be sustained on the same principle. We should regard, perhaps a donation —I am not certain of it, but I think we ought to regard a charitable donation — to circulate the Constitution of the United States as praiseworthy in itself, in the absence of any legislation to sustain that donation; I speak, of course, of a supposable gift, not made to any of these incorporated charities which are authorized by law to take such gifts. It would be praiseworthy in itself. But all political as well as all religious opinions are free in this country. A donation to circulate a partisan newspaper or a violent political tract would have the same legal and constitutional merit, and if you depart from the written laws of the State you have got to give effect to both of those gifts on the same principle, or to neither of them. A gift to circulate the Holy Scriptures would be regarded as a praiseworthy and a charitable gift; but suppose some individual, with a vast estate of a million dollars, disinheriting his heirs, should give the whole of it for that object without the sanction of the written laws of the State, give it to an institution founded by himself, without law, and in the absence of law, endeavoring by that magnificent gift to purchase the favor of Heaven in atonement for a life, perhaps of avarice. Will that stand, or will it not? Ought it to stand, or ought it not to stand? The purpose of circulating the Holy Scriptures is undoubtedly a praiseworthy one, but if you say that that gift shall stand in the absence of the written laws of the State, how will you treat a like gift to circulate the Koran or the Mormon gospel? When you depart from the laws of the State, you are afloat, you have no definition of what is praiseworthy, or what is charitable. The Koran and the Mormon gospel, under the Constitution of this State, have the same legal merits as the Holy Scriptures. There is no law, and it has been held and adjudged there never was any law, in this State for upholding gifts and donations of any kind to public purposes, except the written laws of the State. They must be made under legislative sanction, either expressed in the special acts and charters to which I have referred, or in the general laws of the State on authorizing corporations to be formed for public objects. This article upon which our attention is now engaged, proposes to change that great principle of law; for it provides that any body may found any institution for any lawful purpose. Any body may therefore devote his estate to the building of a pyramid, for that is a lawful purpose; it is, in itself, an innocent purpose, and is condemned by no law whatever. Every body, sir, would consider it a lawful and a praiseworthy gift, it may be, to build a statue of the father of his country. We have no law for it, unless it may be done, or is done, under some of the written laws of the State. But suppose a man makes a donation outside of this written law, that is not through one of these incorporated institutions, for that very object, it is easy enough to say that that donation should stand. But suppose another man makes a like donation to erect a statue of Jefferson Davis. He has the same sanction of the law and the same right to his opinions that the other man has. Both these gifts must stand or fall according to the same legal principles precisely. They are both lawful in themselves, and they are both public in their character, because they are not private, and do not depend on a private limitation of property. This article proposes to subvert that principle of law to which I have referred, and to enable any man to select his own purpose, to disinherit his own family, and without any written law whatever to devote his estate as he pleases; not wholly, I admit, without restraint, because it is provided in the next section that all gifts to these public objects, by will, must undergo the examination of this board of charity commissioners, and if a gift shall happen to suit the opinions or the caprice of that board, it shall stand, otherwise it must fall. What is this but substituting the opinion or the caprice of the board for the law of the land? It is my judgment that these gifts should stand or fall according to the law of the land, and according to some general rule applicable to all cases, and not according to the discretion or the caprice of any man, or of any board whatever. How will it work? In my opinion this is the most mischievous provision that can be incor-

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porated into the Constitution. Here is a magnificent gift made to establish a Protestant institution of learning. Very well. If a majority of the board are Protestant in their inclinations they will probably overlook the claims of family and of kindred, overlook all the proprieties and all the justice of the question, and will confirm that gift. But suppose it be an equally magnificent gift to found such an institution in this State as the Pope and the cardinals of Rome would establish, that gift will be voided, and thus we shall have charities take effect or not to take effect, according to the religion or the denominational views and impressions of this magnificent board of charities, instead of according to the law of the State. It is made the duty of the board of charities, it is true, to examine into the condition of the testator's family or of any claimants on his bounty. But I prefer to leave the testator's family to the protection of established rules of law which operate alike in all cases, instead of the discretion of any man or any board. I prefer to have their rights and claims adjudicated upon in the lawful and customary tribunals of the State instead of this board of charities. If, according to the law of the land, the gift can take effect, let it take effect. If, according to the law of the land, it cannot take effect, then I say the estate belongs to the testator's legal successors, to his family and children. This, sir, is a very extraordinary subject to incorporate into the fundamental law of the State. I do not say that some amendment of legislation may may not be wise. I know of one change which I think ought to be made in the laws of the State, and that is a simple change in the law of perpetuity so that a charitable or private gift or conveyance may take effect if it happens to be suspended for a little longer time than is permitted by the existing law of the State. I will go for that change; and I entertain no doubt whatever that if the attention of the Legislature were called to the subject the change would be made without the least hesitation. But, I repeat, this is a most extraordinary subject to incorporate into the constitutional law of the State. No attempt of the kind was ever made before. Nothing of the kind is found in any of the Constitutions of this State. Nothing of the kind can be found in any Constitution of any of the United States. It is without precedent, without example, and, I think, ought not to be adopted by this Convention. For the purpose of saving probably several days' time in the discussion of the details of this article—and I might examine them much more at length—I hope that the motion I have made will prevail, and that the subject may be disposed of without a further consumption of time.

Mr. BELL—I hope the gentleman from Onondaga [Mr. Comstock] will withdraw that motion for the present.

Mr. COMSTOCK—Why should I withdraw it? It is debatable, I suppose.

Mr. E. BROOKS—No, sir, it is not debatable, except to a very limited extent.

Mr. COMSTOCK—I withdraw it for the moment, out of deference to the gentleman from Jefferson [Mr. Bell] if he wishes to speak.

Mr. BELL—I regard this subject of too great importance to be thus summarily disposed of. I did not expect to say a word upon the subject this morning, supposing that the article on the powers and duties of the Legislature would be considered. I have been very much interested in the able and exhaustive speech of the gentleman from Richmond [Mr. E. Brooks], who has covered the whole ground, in theory at least. I only regret that his remarks were not more practical. Every member of this Convention will, I doubt not, concede that provision should be made somewhere for the support of the poor, the destitute and the outcasts of the State. The only point of difference will be, I apprehend, how this desirable end may be best reached. There are several distinct propositions already before us, and in the minds of the people throughout the State, by which relief should be afforded to this class of our people:

1. The voluntary system is urged, whereby all our charitable institutions shall be sustained by private contributions from the charitable, in accordance with the law recited at length, by my learned friend from Onondaga [Mr. Comstock].

2. By a system that shall encourage private benefactions to the greatest extent possible, and then empowers the several counties and cities to provide whatever deficiencies there may be needed by tax on their respective counties or cities. There is much merit in this last proposition. The appropriations now made by the State to orphan asylums are raised by tax, and apportioned among the various counties, in proportion to their taxable property. Nothing is gained by passing these donations through the State treasury, but much may be saved by allowing the local authorities to manage these matters from their more intimate knowledge of the wants and merits of the objects of charity within their own bounds than any Legislature or State board of commissioners can possess.

3. A continuation of the present system of appropriations by the Legislature. Many serious objections are urged against this plan. It is too expensive, it is liable to abuse. The signers of the thousand petitions which the gentleman from Richmond [Mr. E. Brooks] informs us have been presented to this Convention and referred to his committee, assert that an unjustifiable share of these appropriations is bestowed upon the Roman Catholic institutions. However this may be, I will only say in this connection, that I consider this mode of dispensing charities subject to much abuse. It is well known by all in any degree familiar with legislation, that near the close of each session of the Legislature, by a process known as "log-rolling," larger appropriations are made to these local charities than they could possibly obtain from their own counties, when these appropriations are distributed over the different portions of the State. The charity "bill" is sure to command the requisite two-thirds vote, however much it may deplete the State treasury. I have seen the charity and supply bills loaded down in this way until hundreds of thousands of dollars have been appropriated, where probably one-half of the amount might have sufficed. This system is not confined to actual charities, but sectarian and religious denominations come in for a share, and frequently appropriations are, in

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this manner, obtained for objects outside of *charitable* institutions. The next proposition that I will notice is that reported by the Committee on Charities and Charitable Institutions. I consider this a great improvement on the present system of legislative appropriation, for by this system each appropriation must be subjected to the scrutiny of a board of commissioners, that are not all of one denomination but shall represent the different denominations or possibly no denomination. A charity cannot, therefore, be sectarian, but must have some show of merit before it can pass this board. I am of the opinion that this plan is subject, to a certain extent, to the criticism of the honorable gentleman from Onondaga [Mr. Comstock]. although as before stated it is a vast improvement upon the present system. Any plan that takes the control out of the hands of those benevolent individuals who have hearts to feel and money to contribute for the well-being of these little outcasts, is wrong in theory, and generally ends disastrously. Whatever else we may do, let us not quench the zeal or relax the efforts of those who found and manage these institutions. State control and large State appropriations tend to dry up individual benevolence. Should this whole matter be left with the people, with authority vested in the several boards of supervisors to supply deficiencies, I imagine that the institutions would be well sustained. Can it be supposed that these local authorities have less interest in the care and education of the destitute children in their midst than the Legislature or any State board can have? In the speech of the honorable chairman of the Committee on Charities [Mr. E. Brooks], he referred, and very appropriately, I think, to the causes of orphanage, pauperism and destitution. I regret that he did not dwell more particularly on the great, and I may say, universal cause of taxation, pauperism and crime. The policy of the State, in my opinion, has been essentially wrong in regard to this matter. With one hand the State sets in motion an institution that scatters pauperism and crime throughout its limits broadcast, and with the other hand it undertakes to heal those wounds and to provide remedies for the injury thus done. I refer to the present license system. For the sum of thirty dollars men are authorized to sell intoxicating liquors in every town and county in the State. Herein you have a key to this whole system of destitution, orphanage and crime with which the people are burdened. The thirty dollars put in the county treasury causes an expenditure of hundreds of thousands of dollars. Our whole system is radically wrong in this regard. We should commence at the fountain—we should remove the cause, if we would avoid the effect. We might as well license small-pox throughout the State, and then establish asylums and posthouses to cure the disease thus caused. If we would, with one blow, strike from our statute books the present license system, we would diminish by nine-tenths the cost of supporting paupers, criminals and orphan children. Let us look reasonably on this subject, and not undertake to purify the stream while the fountain is impure; nor to make the waters sweet while the fountain is bitter. I hope that this subject may be fully discussed, and that we may not report progress until we come to a better understanding concerning it. Let us ascertain what the necessities of the case are, and then we will be prepared to apply appropriate remedies. The best remedy is to remove the cause.

Mr. COMSTOCK—I renew my motion that the committee rise and report progress.

Mr. S. TOWNSEND—Is that motion debatable?

The CHAIRMAN—No, sir.

Mr. S. TOWNSEND—With the instructions that the gentleman proposes to give, it is undoubtedly debatable.

Mr. COMSTOCK—There were no instructions. We cannot instruct the Convention. But I stated my object in making the motion. I will withdraw the motion, for the time being, if the gentleman desires to speak.

Mr. S. TOWNSEND—I have no objection that the Convention rise and report progress, but I trust, in the discussion of this subject, after we get in Convention, we shall be subject to no limit as to time—of five or twenty minutes; though, probably twenty minutes will be long enough for any one, after the instructive speech we have had from the chairman of the committee. As the gentleman from Steuben [Mr. Spencer] has said, this question is one of an organic character and one that the Convention can afford to spend time upon. Whether, in this great subject, the law shall intervene, of which the gentleman from Onondaga [Mr. Comstock] has spoken, or whether it shall not, and the matter shall be left to private philanthrophy, is a question of the utmost importance. It is a question that will bear the closest investigation. No gentleman can say his conclusions are fixed and immovable on this subject. Facts may be deduced, arguments brought forward, to show things differently from the way they have seemed. For one, I confess that I have long believed that we attempt to govern ourselves entirely too much in all these matters—that much legislation and many acts are founded in error. I believe that these things had much better be left, not only in the counties or towns, but as I have said in the matter of elections to school districts, or even to the family,—to the spontaneous disposition, induced by the practical knowledge we all possess of the need for the exercise of personal charity. The gentleman from Onondaga [Mr. Comstock] asks how we define the word "charity." I thought my colleague [Mr. E. Brooks] had well defined it in the answer made to the question asked the Saviour, as to who was a man's neighbor. I am willing even now to drop this whole question in the Constitution, and leave it to the statute law. It is very proper for the sovereignty of the State to protect itself, and to protect the citizens. But so long as the question is presented, and the claim urged for further aid through public beneficence, beyond the contributions of individuals, the question is very proper to be considered what further aid, and in what manner, it shall be given. We see the efforts that society is continually making through various associations for charitable purposes. There are the Odd Fellows, and

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the Masonic system which extends even to the despotisms of Europe; and if the State should provide for those wants, these societies are all wrong in their theory of aid. If the State attempts to provide in this matter, we should either do one thing or the other—we should say, instead of leaving it to private philanthropy, that there shall be no real meritorious suffering but what the State will relieve. I will ask my friend from Onondaga [Mr. Comstock] do not the Constitution and laws of this State say, in theory, that every man has now a public and official claim on some State, county, or town authority for assistance when he needs it—when he is incapable of self-support? In the city of New York are we not taxed to an immense extent, and in the remotest counties of the State taxed for it to a large extent? Is there any limitation on the amount which may be taxed and the amount to be raised? Take the average income of property in this State, although no board of commissioners would do it, they have the right to tax it to a very large extent for the relief of such deserving persons. We have got a system of laws, founded upon the Constitution—many probably not strictly authorized by our Constitution—the theory of which is that no man who has claims shall suffer, that the rich shall pay for their support if they are in need. We also have hundreds of charters for charitable institutions supported by such liberal men as Cooper, Peabody, and others, who attempt to do what the State says that the State shall do. The question is a grave one whether we should perpetuate the system of State interference, as we shall do to a great extent if we constitutionalize it. We have fallen into the habit of constitutionalizing many things which have been heretofore only temporary, and under the laws of the State, as I mentioned in discussing some portions of the judiciary article. The question is whether we shall attempt to perfect this system of charities and constitutionalize it, and look to the ministers of the law to carry it out effectually, or drop the matter, and leave it to private charities and the benevolence of private individuals. Thirty years ago Roman Catholics would not send their children to our schools, on the ground that they did not recognize the teachings of religion, although they were required to contribute to the support of those schools. In the city of New York the Roman Catholic schools, which I have had occasion to examine, are similar to our public schools in every respect, except that the principles of religion are recognized and certain forms of prayer and religious observances required from the scholars. That same system still exists in the city of New York, and yet the parents of Roman Catholic children are compelled to support an institution which is not recognized by them. This question covers the educational ground which we have not yet treated of. I believe the majority of the people think many of these charities can be better carried on by private individuals; that we should have fewer and clearer provisions in the Constitution and general laws that can be understood; and, above all, leave these duties resting as close upon the home circle and hearth as possible. Any efforts of ours that will tend toward that result I think will be of benefit. I hope, therefore, the gentleman from Onondaga [Mr. Comstock] will disclaim the idea of limitation of debate in Convention.

Mr. PROSSER—Is a substitute in order?

The CHAIRMAN—It is in order.

Mr. PROSSER—I propose the following substitute:

"ART. —. SEC. —. No appropriation for charitable purposes shall be made by the Legislature after the adoption of this Constitution, except to such institutions as shall be governed and maintained wholly by the State."

The CHAIRMAN—The Chair is of opinion that that substitute is not now in order.

Mr. PROSSER—Then I misunderstood the decision of the Chair.

The CHAIRMAN—The Chair was not aware that the substitute to be offered was a substitute for the whole article.

Mr. PROSSER—It is.

Mr. COMSTOCK—It is evident that the field for debate upon this question is almost without limit. I therefore renew my motion that the committee rise and report—

Mr. E. BROOKS—I hope my friend will withdraw that motion for a moment.

Mr. COMSTOCK—I will do so.

Mr. E. BROOKS — I should be very much grieved and disappointed if it should be the judgment of this committee to give this subject the go by, after the experience we have had in its consideration, from the assembling of this Convention in June last, to the present time. My friend from Onondaga [Mr. Comstock] has said that in his judgment the remarks which I made this morning were hardly germane to the subject of this article. If he will recall the history of the appointment of the Committee upon Charities and Charitable Institutions, he will remember that it grew out of a very general discussion at an early meeting of the Convention for the formation of its committees, in which discussion it was determined that such a committee was necessary; and he will also remember that a very large number of memorials relating to this subject have been presented to this body. They have been commented upon in the public press, and the public attention has been given very largely to them, and in my judgment it will prove to be economical, wise and timely, to act upon this subject now. The gentleman from Jefferson [Mr. Bell], has also alluded to some abuses which have grown out of charitable appropriations in the history of the Legislature of which he has been for several years a member, and I think all the members of the Legislature will bear witness to the same abuse. If this article shall receive the sanction of the Convention, it will undoubtedly prevent those abuses and save the State large amounts of money. It is no uncommon practice in the Legislature for a gentleman representing one county, and for example I will take my own county, to rise and and move that some private society shall receive one thousand dollars. A gentleman representing the county of Jefferson, or the county of Erie, or the county of Oswego, or some other county asks a similar appropriation for an institution in his county, and there seems

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to be a general understanding among members, without any examination or investigation of the merit of these applications. Thus members, by a kindly consideration of the claims of each other, secure a joint support for their respective appropriations. Under this system great abuses have grown up in the State, and a great many thousands of dollars have been appropriated during the last few years for charities which were more properly objects of private benevolence, and which in most cases could have been carried on very well by private persons interested in them, but which, under this custom, have been aided by the State in the manner I have named. Now, this is a very great evil, and if this article is adopted it will prevent the recurrence of such abuses, for no appropriation of money can be made except upon the examination and report of the commission on charities. I desire also to say in behalf of this article generally, that it is not the work of my own hands, but was prepared by one of the leading legal members of the Convention, who is now unfortunately absent and has been absent during the last few weeks of our deliberations. I mean Mr. Dwight, of the city of New York. I desire to say further that the Committee on Charities and Charitable Institutions gave it great consideration at the time. Now the gentleman from Onondaga [Mr. Comstock] and the gentleman from New York of whom I have spoken [Mr. Dwight] in a very important contest in this State growing out of the question of charity, fortunately or unfortunately, differed widely in their views upon this subject, and I do not think that the gentleman from Onondaga [Mr. Comstock] has treated this article in a manner which is warranted by its terms. For example, he has said that the purpose of the first section is to allow an unlimited visiting by this board of charities to all the public and private benevolences in the State. With all respect to my friend, it does no such thing; but in direct terms it prohibits the performance of any such duty. Let us see, sir, what the article says. "The Legislature shall establish a board of commissioners of charity consisting of eight persons, a majority of whom shall constitute a quorum, who shall have power to visit, inspect, and require reports from charitable institutions, of every nature and description whatever, whether established by individuals, or supported or aided by the State, except religious organizations of a sectarian character, penal and correctional institutions otherwise controlled by law." Why, sir, the exception is as broad as language can make it, and is, it seems to me, all that any member of this Convention can reasonably desire. Sir, why should not a board of charities visit the charitable institutions of the State? What harm can possibly arise from such visitation? Have they not a right to do it? Sir, the State appropriates public money to aid or support these charities. Is there any doubt of the power of the officers of the State to visit these institutions, and to report to the Legislature upon their merits and demerits?

Mr. COMSTOCK—Will the gentleman permit me to interrupt him?

Mr. BROOKS—Yes, sir.

Mr. COMSTOCK—I think the gentleman has misunderstood me. I only said on the subject of this visitation, that there is ample power of visitation now vested in the supreme court, or in the appointees of the supreme court—power more ample than is conferred here.

Mr. E. BROOKS—Well, sir, that may be true, and I will add that the Legislature of 1867, in the exercise of a wise discretion, in my judgment, appointed a board of State charities to do the very work which is proposed in this article. Now, the question may properly come from the gentleman from Onondaga [Mr. Comstock] and others, if the State Legislature has done this and can do it, why not leave it to the Legislature? My answer is, that it is wise to put it in the fundamental law of the State, and to say there that this thing shall be done, and not to make it merely discretionary with the Legislature to say whether it will or will not do what is here proposed. It is for this purpose I desire that this board of commissioners should be created. I entertain as strong objections against legislative boards generally, as any other gentleman of this body; but the labors of this charitable commission are to be a free-will offering on the part of the gentlemen selected by the Governor, and by the Legislature. It is impossible for me, with my limited judgment of what is right, to see, either that the principle is wrong or that any abuse can possibly grow out of it. It was with this view, sir, that this article was framed by the committee, after some two or three months' careful deliberation. As to the objection that the matter belongs to the Legislature, why, sir, there has not been an article introduced into this body, with the single exception of the judicial article, in regard to which the argument has not been made, "all this belongs properly to the Legislature, and should be exercised by the State through its Legislature, rather than by being made mandatory by the Constitution." As I said in opening this discussion in regard to this second section, I was disposed to leave it to the legal members of the Convention and the committee; but unfortunately most of the gentlemen associated with me in the committee are absent. It seems to me, however, that no abuse can grow out of the adoption of this article in whole or part, and I think that my friend from Onondaga [Mr. Comstock] did not state it fairly when he referred to the first sentence or two of the second section, and omitted to dwell with fair consideration upon the second sentence of the same section. Let us read the whole of the first seven lines and see if there is not ample power in the Legislature to do by law what he says there is power to do by legislative enactment, and whether any abuses can grow out of the exercise of that power:

"Any person or persons may establish or increase the endowment of a charitable institution for the support of the poor, the advancement of learning and other lawful and public purpose. Such institution shall be established, and its funds administered in accordance with the rules of the court of equity, but the Legislature shall have power to limit the amount which a testator may devise or bequeath for charitable purposes."

My friend has dwelt upon the phrase "lawful

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and public purpose," as showing what may be done under the exercise of this authority. I put it to him if he believes that any such thing as he intimates will be done, whether public opinion would not frown upon the attempt, and whether the Legislature would dare enact any such provision as he has made—for example, to build a pyramid and call it a charitable institution? Why, sir, the very illustration of the gentleman shows how far he goes out of the way in making it. Nobody believes, in regard to these charities, that they mean any thing more than what is understood and expressed. However much, under the technicality of law in England and in other countries, the meaning of the term "charity" may be extended, in this country every man understands a charity to be that which relieves the minds, bodies and necessities of the great mass of the poor belonging to the State. When my friend asks me what is a charity, I answer him in language which I have before used. Whatever conserves or preserves the bodies and goods, as well as the minds of men, may become a charity, but in no intelligent, enlightened sense is a pyramid a charity. Neither is a monument to Jefferson Davis a charity, nor, in a proper sense of the word, is a monument to George Washington a charity, nor an appropriation for the support of a priest or for the support of any particular religious denomination. The very idea of presenting such a view to the Convention, or to a legislative body, is, it seems to me, with all respect to the gentleman, almost an absurdity. I desire, sir, that this subject may not be mixed up with any such irrelevant matters. I have, with very great labor, entered upon the consideration of this whole subject, and have discussed it in its entire length and breadth. My friend from Jefferson [Mr. Bell] has complained that I did not go enough into details, that I did not dwell upon what he considered the great cause that makes charity necessary, viz.: intemperance. Sir, I gave every statistical fact connected with the history of this State for the last twenty years, showing how many men and women had been the victims of intemperance, and who thereby had become dependent upon the State. I gave every important item in regard to the schools of the State, its prisons and poor-houses, and in regard to the institutions for the education of the deaf and dumb, the blind and insane. All these facts have been presented to this Convention in detail, in order to prove that there is reason why the people of the State should take these charities under their fostering care. My friend from Erie [Mr. Prosser] proposes an amendment (not now in order, but no doubt to be submitted hereafter) to the effect that no money shall be given to any charitable institution unless the charity is supported and controlled entirely by the State. Now, sir, I cannot conceive of any provision more unjust than this. Those who seek relief may be the maimed, the halt, the blind, the dumb. They may be orphans whose fathers sacrificed their lives in the service of the country. They may be widows left wholly dependent, and having a special claim upon the State, and yet my friend from Erie [Mr. Prosser] would close the treasury of the State against them unless they were inmates of some institution wholly supported and governed by the State. Sir, in an enlightened commonwealth like this, I do not believe that this will ever be done by legislative or constitutional enactment, or in any other way. Now, sir, in conclusion, if the judgment of this Convention shall decree that this subject must be dismissed summarily, as proposed by the gentleman from Onondaga [Mr. Comstock], I am content; but I do say that, if any just regard is had for principles of economy, any wish to correct great public evils, any desire to dispense with a wise hand the charities of this State, under regulations to be made by law, in my judgment, the provision which has been submitted to this body by this committee will be adopted. Before I take my seat let me also say that if the subject be not dismissed, I shall move to strike out that provision in the third section, article two, paragraph two, contained in the words "and that it is not religious or sectarian in its character." When this article was submitted to the Convention, in August last, it was under the operation and influence of the memorials to which I have already made extensive reference; but the more attention I give to this subject the more prompt I am to come to the conclusion that it is unwise, unjust, and unchristian, to ask what is the creed or what the religious faith of any person who is a needy applicant for State relief. The only reason why, in certain parts of this State, the children of Roman Catholics and their parents have received more money, perhaps, than those of other denominations, is no doubt the fact that, unfortunately, in the majority of cases they are among the poorer classes, and I will not for one discriminate against a sect on account of the poverty of those who embrace it, no do I intend to inquire, directly or indirectly, what is the faith of any who are really needy and who seek relief.

Mr. DEVELIN—I do not propose to enter at present into a discussion of the section under consideration. I rise simply to correct a mis statement, or rather an error in a statement of fact which has been made by the gentleman wh has just taken his seat [Mr. Brooks] gentleman from Richmond [Mr. Curti Catholic institutions of this State ha a larger amount of aid from the St than those of any other denominati do not justify the assertion: the Ca tions of this State have not receive of the contributions from the Sta charitable purposes. The Chri divided into two great denomina estant and the Catholic, which s other like opposing armies; and may be a Baptist, or an Episc byterian, or a Universalis member of any church of he is a Protestant. Thus made by the State to Episcopal, Methodist or have been made to Protes the contributions made to have been made to them, that comparing the amou of these sects it is unjust to say that they have rec

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of the State funds than any other denomination. All these sects are included and incorporated in the one denomination of "Protestant," and thus in the aggregate receive their bounties as Protestant organizations.

Mr. E. BROOKS—I did not say what the gentleman says I said. I said, if it should prove to be a fact that Roman Catholics had received more aid than any other denomination—

Mr. PROSSER—I now offer a substitute for the first section as follows:

"No appropriation for charitable purposes shall be made by the Legislature after the adoption of this Constitution, except to such institutions as shall be wholly under the control and management of the State."

There are, in my judgment, reasons for the Legislature dispensing some charities, and prominent among them may be mentioned, those for the education and relief of the blind, the idiotic, the deaf and dumb, and the insane; because, sir, in the several counties of the State these unfortunates could not be so well cared for by the local authorities as by the State. These, in my judgment comprise substantially all the charities which it is necessary or proper for the State to dispense; and I think the State should not be in partnership in this business; and that it can do the work better and more wisely when it has entire supervision over the institutions to which it dispenses its charities.

Mr. MURPHY—I expressed my views briefly in the discussion which took place in August last, to which the honorable chairman of the Committee on Charities has referred, and I am happy here, sir, to congratulate the State and the Convention that that honorable gentleman has withdrawn from the consideration of this body the proposition to appoint a board of commissioners with power, to which I then stated some objections, to determine whether charitable institutions are of a sectarian character or not. I am, however, of opinion that this article should not in any form be incorporated in the Constitution. The reason for the action which the Convention is asked to take upon this subject is stated by the honorable chairman of that committee to be the thousand petitions which have been sent from the different parts of the State asking us to adopt a provision against allowing the Legislature to give aid to sectarian institutions. I do not know any thing about these memorials. Perhaps they were as numerous as the gentleman states, and perhaps also that they were of a stereotype character, sent out by a particular individual or group of individuals from some one point, and signed without a proper consideration of the whole subject The article which the committee have introduced, however, goes much further than would be required to obviate the objections suggested in the memorials. These memorials, aimed at an abuse which has been referred to as existing in the Legislature, this system of "log-rolling" by which these appropriations for charitable institutions are obtained. Now, sir, for one, I must protest that the statement made by the honorable gentleman here in regard to that matter, is not correct. It is true that there was an appropriation made for his county, for an institution there, to the amount of one thousand dollars, but it was not made in that hasty way, nor by means of any such combination as the gentleman speaks of. The grants that have been made for charities by the Legislature, of late years have all come under the consideration of appropriate committees—for four years past under the consideration of the committee of which the honorable gentleman from Jefferson [Mr. Bell] was a member, and every such application was strictly considered, and no grant was accomplished by reason of any such combination as that which the gentleman has spoken of. Now, sir, I have already avowed the principle, and I avow it here again today, and I shall urge it upon the consideration of this Convention that it is a matter of economy, as well as of right and justice, that the State should aid these private institutions in carrying on their good work. The poor and destitute among us have to be provided for by the community. There are scattered throughout the State bodies of individuals who make it their business to seek out these sufferers and give them such relief as it is in their power to give—relief which cannot be afforded through the usual instrumentalities of the law. They form your orphan asylums, hospitals, dispensaries, and other charitable institutions, for the express purpose of relieving human misery. They give their own time and means to that object, and they get subscriptions from all who are willing to give and aid in their work. Still, they find that they are not competent to do all that is to be done, to relieve all the cases that come before them, and so they apply to the Legislature and say, "give us a little aid, a simple subsidy to help us to carry on this charitable work." Now, is it not much better to have the work done in this way than to throw upon the counties the duty of raising by law the money required to aid these sufferers, or to leave their distresses unrelieved? I think there is no one who has considered the subject but will agree with me that this is the best course to be pursued. But it is said that abuses exist under this system, and particularly these abuses in the matter of improper combinations in the Legislature to secure such appropriations. I have already said that, to my own knowledge, that is not so. Now, let us look at it in another aspect. The committee have favored us with figures. They have given us the whole amount of charities that have been dispensed in this State for such purposes as I have mentioned—orphan asylums, hospitals, dispensaries, and kindred institutions, for the last twenty years, and we find that less than $80,000 a year has been appropriated for such purposes during that time. Is there any abuse evident in this? Where is there any thing to be alarmed at? I think we will find the Legislature entirely competent to dispose properly of this whole matter, and that they will never give charity to any institution without seeing that it is deserved, and that there will always be vigilance on the part of the representatives of the tax payers of Chautauqua to see that the charities in the county of Kings do not receive from the public treasury more than they are entitled to, and *vice versa*. There is always a close, critical examination of these claims when they come before the Legislature. Representatives of other sections

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of the State always examine them closely, as a matter of self-interest, and they will not be likely to vote for them unless they consider the objects deserving. If the appropriations are equally distributed throughout the State and the institutions in all parts of it receive a little where is the harm, as long as the money is properly appropriated for the purpose for which it is intended? Who has ever yet heard any complaint that money voted for such purpose has been misappropriated. And what matters it upon what persons these moneys be expended, provided they be expended for charitable purposes? What matter whether the man who receives aid be Catholic, Turk or Hindoo? If he be a member of the community and a human being he is entitled to our charity without any inquiry being made into his religious belief. So much on the general subject. I objected to this bill particularly for the reason that I referred to a few moments ago when I said that I was happy to learn that the chairman of this committee would withdraw that part of the section. However, since he has come to that determination I shall say nothing now upon that point.

Mr. M. I. TOWNSEND—I am entirely opposed to the whole scheme contained in this article. We have decreed that there shall be no gift of the public funds for charitable purposes without a vote of two-thirds of the members elected to both houses of the Legislature, and for that reason I am satisfied that the people of this State will be taken very good care of in that respect without the establishment of such a board as is proposed in this article. I believe, therefore, that there is no need of creating such a board by the Constitution. I am opposed to the creation of such a board for another reason. It is provided in the article that the Legislature shall make no gift to charities until a report upon it shall have been made by this board. We are asked, therefore, to create a body with powers not only co-ordinate with the powers possessed by your House of Assembly and your Senate; but in respect to this matter superior; because there can be no action on the part of either house favorable to charitable institutions, until the matter shall have received the sanction of those eight men. Now, I believe that if eight men should be thus selected, they would probably be from a fair average of the men of this State. And I think that my imagination will not be held to run very differently from that of other gentlemen in this Convention, when I say that I fancy that after this power should have been in existence five years or thereabouts, there would not be an institution where the surgeonship should be of value, where the stewardship should be of value, where there should be an office of value or any kind of office in the gift of these institution, but that office would be filled with the relatives or the proteges or friends of the members of the commission. That would be the necessary and inevitable result. Here are men holding privileged and irresponsible positions. They are selected by the Governor, and we do not know who is to be Governor. They are selected for reasons, but we do not know for what reasons. They are placed in this position, and they are to stand as an obstruction in the way of the action of the men selected by the electors of this State to dispense the government of the State, and are to be superior to, and have a controlling power over the action of the Legislature itself. For this reason, sir, above all, I am utterly opposed to the creation of any such board. If it be answered that the last Legislature created a board of visitors, I say yes; but did the last Legislature, or did any Legislature in this State, or in any country deriving its laws and traditions from the Anglo-Saxons upon the other side of the water, ever create a body with powers such as are sought to be conferred upon this commission?

Mr. E. BROOKS—Yes.

Mr. M. I. TOWNSEND—These commissioners, created by the Legislature last year, were authorized to examine and report, not to obstruct, not to direct the Legislature where to bestow its bounty and when to withhold it. Sir, this would be the creation of a very dangerous power, and I trust that we are not prepared to stray so far from the traditions of the people from whom we have derived our blood upon this side of the water, or upon the other side, as to create such a power in this State of New York.

Mr. E. BROOKS—The gentleman has asked a question, which, if he will allow me, I shall be very happy to answer. I say yes; there are many, very many, instances in which the governments of the world have created commissioners with ten times the power proposed in this article to be given to these commissioners. All that this article proposes to give to this board is the power of visitation and the power to make reports to the Legislature, leaving the Legislature to say whether the money shall be granted or not.

Mr. M. I. TOWNSEND—Will the gentleman allow me to ask him another question?

Mr. E. BROOKS—Yes, sir.

Mr. M. I. TOWNSEND—I desire to ask the gentleman in what instances either the State of New York, since it has been organized, or Great Britain, since the Reformation, has ever created a commission without whose consent the legislative power could not act?

Mr. E. BROOKS—Why, sir, the gentleman surely has not read this article through in its letter and spirit, or he would not put such an inquiry as that.

Mr. M. I. TOWNSEND—Perhaps the gentleman and myself may be led to criticise this article from different stand-points, and I will content myself now with passing to the review of the branch of this proposition, which I deem most dangerous to the well-being of the community. I think it is the evident intention of the second and third sections to destroy our present limitations upon trusts, and to allow hereafter an unlimited power of creating trusts for charitable uses for all coming time. The second section says: "Any person or persons may establish or increase the endowment of a charitable institution for the support of the poor, the advancement of learning, and other lawful and public purposes." Now, what is meant by these three lines? Is it not meant that there shall be a power for increasing these funds in any way in which they may be increased? And if that power be given by the

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Constitution of the State to increase the endowment of such institutions in any mode by which the endowment may be increased, does it not directly allow the lands of this State to be granted in trust and in perpetuity and dispensed in perpetuity to an unlimited extent? To show further the mischief that does not lurk in this article, but which is patent upon the face of it, we find in the seventeenth and eighteenth lines of the third section, this proposition: "It shall be no objection to a charitable trust that it is perpetual." Now, sir under this proposition to create apparently, a simple board of visitors for purposes of charity, it is proposed to create a state of things under which, in process of time, one-half, aye, the whole of the lands of the State of New York may be held in trust, and managed in what, in the language of the books is called "mortmain." Those gentlemen, or rather this gentleman, for it seems to be the work of Mr. Dwight of New York, have drawn this article with a special disregard of the legislation of the State on this subject, from the time it was organized down to the present time. The article must have been drawn with a singular disregard or forgetfulness of the interests of the State, as between the living, active man managing his own property for his own interests, and thus promoting the interests and well-being of the State, and the management of property by trustees and by clergymen, or by any incompetent persons, in whose hands property, as the history of the world shows, is more likely to go to ruin than it is to prosper. The gentleman from Onondaga [Mr. Comstock] has well alluded to the state of things that existed in England previous to the statute of Queen Elizabeth. I refer to it now for the purpose of stating another fact, that just previous to the time of Queen Elizabeth, it was ascertained that three-fifths of the entire soil of England was held in "mortmain," having been absorbed for charitable and religious purposes, by the gifts and grants of various kinds, and perhaps if it had not been for a violent revolution, such as we have never yet had in this country, and such, I trust, as we never will have, three-fifths of the land in England would be held in "mortmain" down to the present day. Now, sir, that is not a state of things that I desire to see here. My sympathies do not run in that direction. On the contrary, I believe that it was one of the wisest acts of the fathers of this State in the olden time, to make the provisions in regard to trusts that now exist in the law of this State. And under that law what do we see? Individuals have the power to grant for benevolent purposes, the lands which are necessary for the immediate use of these corporations, but when you go beyond that to the agricultural lands, they are held by living individuals, and are managed by the living man with his living hands, and thus prosperity is seen upon every side. This is a proposition to carry us back to a state of things where the gift of land for the endowment of institutions of this character shall be absolutely unlimited, and I am opposed to it. I care very little whether these lands should be given to the Catholic church, or to any particular Protestant church, or to benevolences not religious. No matter to whom they might be given, it is not for the interests of the State that these lands should be held in such wise as not to be susceptible of alienation. We have provided, in other parts of our laws, that a man who is owner of land which he has earned by his labor, shall not be at liberty to entail it for more than twenty-one years beyond two lives now in being, and that is a wise proposition, because the men who formed the system of government under which we live were satisfied that it was for the interests of the State that land should be transferable at short periods, and should not be, in the language of this Constitution, tied up forever. Again, sir, I do not sympathize with the proposition of the gentleman from Erie [Mr. Prosser]. I would give State aid to relieve these charities. I am not a Catholic. I am the farthest from it, perhaps, that a man can well be, and have respect for the God that they worship. But, sir, my Protestantism has not taught me that when I see a naked, barefooted child in the month of January, tracking its little feet in the snow, to ask, before I relieve its necessities, what is the faith in which it is being brought up; and, notwithstanding the multitude of petitions that have come here, I do not believe that that is the sentiment of the State. I believe the sentiment of the State would be to relieve Catholic orphans as well as Protestant orphans, and if we pass no article upon this subject, the other provision that we have made, requiring a two-thirds vote of the members of both branches of the Legislature in order to appropriate the funds of the State for charitable purposes, will, I am satisfied, fully and adequately protect the interests of the State. Now, I have the most profound respect for the hearts of the gentlemen who made this report, and in all that the gentleman from Richmond [Mr. E. Brooks] has said upon the benevolent operations of the day and of the past, I sympathize most cordially. I simply wish to say at this time, that I dissent entirely from the mode of doing good which that committee have proposed to this Convention. I not only dissent entirely from that mode of doing good, but I am prepared to say that I think that, as compared with the proposition contained in this article, Pandora's box was a casket of innocent and refreshing perfumes. [Laughter.]

Mr. BELL—I wish to say a few words in reply to my honorable friend from Kings [Mr. Murphy] who has spoken of his legislative experience, and with whom I have had a very pleasant association on the Finance Committee of the Senate for several years. His memory or mine must be very much at fault in regard to the character and the amount of the appropriations for charitable societies and charitable purposes which have hitherto been made by the State. My recollection is that the appropriations by the Legislature have been very fitful and capricious. In some years they have been wholly withheld, as in 1860 for instance, and in other years they have been made very lavishly, and, as I think, recklessly. I do not wonder that the gentleman who has listened to the urgent importunities of so many thousand applicants for appropriations from the State in aid of these charities should have a very tender heart on the subject. It is a position which

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will try a man in this respect more than any other in which I have ever been placed; if a man has any of the milk of human kindness in his heart he cannot fail to be moved by the appeals that are made to him by the benevolent ladies who in most instances have charge of these institutions. Now, sir, the gentleman from Kings [Mr. Murphy] will confirm what I say when I state that a general appropriation to be divided *pro rata* among the different counties has been made for several years past, of from forty to eighty thousand dollars; and yet his recollection is that there never has been as much as eighty thousand dollars appropriated at any one session to the charities of the State.

Mr. MURPHY—Will my friend allow me to interrupt him?

Mr. BELL—Certainly, sir.

Mr. MURPHY—My statement was that the average amount expended for the last twenty years, according to the report of the Committee on Charities and Charitable Institutions, did not exceed eighty thousand dollars annually. I did not say that there was no year in which a greater sum was appropriated; and in confirmation of what I did say, if the gentleman will permit me, I will read from the report in question.

"In twenty full years we have paid as a State for all the public, private, religious, educational and charitable institutions, chartered, incorporated and not chartered, including, of course, what are called State, charitable and other institutions, such as orphan asylums, hospitals, dispensaries, colleges, universities, normal schools, agricultural colleges, etc., etc., $6,920,881 (not over one-fifth of a mill upon the assessed value of the State), and of this amount the orphan asylums and kindred institutions have received $617,120.16, the hospitals and kindred institutions $823,289.53, and all the dispensaries $142,579.05, making a total in over twenty years of $1,582,981.74."

Mr. BELL—That may all be correct, and I have no doubt it is. I have entire confidence in any report that the gentleman may make of his own knowledge; but that is not the point. I stated that these appropriations were yearly increasing to a fearful extent. I presume that the average for twenty years past may not have exceeded eighty thousand dollars. In 1860 no appropriation was made to these institutions, while in 1861, thereafter and large appropriations were made. For several years past nearly half a million dollars have been appropriated.

Mr. MURPHY—I challenge that statement.

Mr. BELL—Well, it may be that I have named too large a sum. I do not assume to give the amount with entire accuracy, neither do I pretend to assert that this sum was appropriated directly to outside charities; what I mean is, that directly and indirectly, a very large amount, approximating half a million, was appropriated to the various charitable institutions of the State, and that the amount of these appropriations is constantly increasing.

Mr. E. BROOKS—If the gentleman will allow me, I can give him the precise figures in regard to the class of appropriations to which allusion has been made, I mean for the orphan asylums, hospitals, etc. Here is the language of the act appropriating money to these institutions: "For the orphan asylums, homes for the friendless and other charitable institutions of like character, for their maintenance, eighty thousand dollars, to be paid as follows, viz.: The said amount shall be divided among the several counties in proportion to their respective valuations, as established by the State board of equalization, and the sums thus awarded to each county, except the county of Cayuga, shall be paid to the following incorporated orphan asylums and institutions, in proportion to the number of orphans and homeless persons maintained in them during the present fiscal year: For the hospitals of the State, except the New York Hospital, the Bellevue Hospital, the St. Luke's Hospital, in the city of New York, but including the Women's Hospital, the Mount Sinai Hospital, the New York Infirmary for Women and Children, the Hospital of the Poor of St. Francis, the Ladies' Relief Association of Elmira, for the Soldiers' Home, the St. Mary's Hospital at Rochester, the Rochester City Hospital, the Buffalo General Hospital, the St. Mary's Lying-in Women's and Foundling Hospital at Buffalo, to be divided among these institutions in proportion to the number of beneficiary patients in them for whom no other provision has been made, and the time that such patients shall have been under treatment during the present fiscal year, fifty-five thousand dollars."

I think that will cover all appropriations of a miscellaneous character.

Mr. BELL—Can the gentleman from Richmond [Mr. E. Brooks] give the aggregate amount?

Mr. E. BROOKS—It is short of two hundred thousand dollars, for hospitals, orphan asylums and this class of charities, and only one hundred and fifty-five thousand dollars for the items herein stated.

Mr. BELL—I think that amount must be too small. I find that in 1865, over $400,000 were appropriated as I have just stated. However, it is not material to my object now to get at the precise amount. I only say that is rapidly increasing from year to year to a fearful extent, as will be seen from the appropriations contained in the laws of the last few sessions of the Legislature. In regard to the log-rolling operations in the Legislature, by which these appropriations are obtained, I will say that it has been customary for the Committee of Ways and Means and of the Finance Committee of the Senate to examine the different applications which has been referred to them with such argument as may be presented, and make up as judicious appropriation as possible and to submit it to the body of which they are a committee, but in every session some member rises in his place and moves an appropriation to some institution in his locality outside of the report—a process which, to use a familiar term known in the Legislature, is called "jumping in" an appropriation. Another member from another portion of the State will "jump in" an appropriation for his locality; and so on, appropriations for different localities will be "jumped in" until the bills have been literally loaded down with appropriations to institutions which, in many instances, have made no formal application for aid. In order to confine these appropriations to institutions that have evidence of use-

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fulness the committee have been obliged to get the bill referred back to them for further examination and to subject these different appropriations to greater scrutiny than could be had in the body itself. In this way very large appropriations have been added to the bill. For example, it may occur that, unless you make an appropriation for Rochester, the Rochester members will oppose the bill reported by the committee. But if you make an appropriation for Rochester you also make an appropriation for Buffalo, an appropriation for Utica, an appropriation for Troy, an appropriation for Albany, an appropriation for New York; all these large points must be taken care of before you can pass the bill. The gentleman from Kings [Mr. Murphy] understands the process perfectly well.

Mr. MURPHY—I do not. [Laughter.]

Mr. BELL—I do not wonder, Mr. Chairman, that his denial excites the laughter of the members of this Convention. In the way that I have explained, the bill has been annually loaded down with large sums of doubtful utility, in order to secure worthy appropriations. In the way I have described very many appropriations of doubtful character have been made under the plea that money expended for charity is money well expended—a proposition to which, taken in its general sense, I give a cordial support. Much worse appropriations are made than those which are made to sustain those charities, and if the Legislature do nothing worse than to feed the hungry and clothe the naked, I think they deserve greater credit than they now receive.

The hour of two having arrived, the PRESIDENT resumed the chair, and announced that the Convention would, under the standing rule, take a recess until seven o'clock.

EVENING SESSION.

The Convention re-assembled at seven o'clock and again resolved itself into Committee of the Whole, on the report of the Committee on Charities and Charitable Institutions, Mr. OPDYKE, of New York, in the chair.

The CHAIRMAN announced the pending question to be on the substitute offered by Mr. Prosser.

Mr. PROSSER—I desire to withdraw the pending proposition, if it is in order to do so.

The CHAIRMAN—No action having been taken on the substitute of the gentleman, he can withdraw it.

Mr. PROSSER—Then I withdraw the proposition, and offer the following substitute in its stead.

The SECRETARY read the substitute as follows:

SEC. 1. No appropriation for charitable purposes shall be made by the Legislature after the adoption of this Constitution, except to such institutions as shall be governed and maintained wholly by the State.

Mr. PROSSER—This substitute differs very little from the one I previously offered. The substitute I offered first, contained a clause that such appropriation should be made only where such institutions were maintained by the State. The phrase "maintained" very likely was objectionable, and I think so myself on further reflection. What I seek is to confine legislative appropriations of this character to such institutions as are controlled and managed by the State. When the Legislature shall have made sufficient appppropriations to those institutions, I think that their duties in that regard are wisely ended. If I understand aright, the petitions and remonstrances which have come up here, they have referred to the action of the Legislature entirely outside of State institutions. I have never heard a word of complaint, though such complaints may have been made, that the Legislature has made lavish appropriations for charities to sustain State institutions. As I said this morning, I think there are good reasons why the Legislature should have power to make appropriations for the blind, the idiotic, the insane, and the deaf and dumb. For sir, those unfortunates are not of sufficient numbers in many of the counties of the State to enable such counties to cheaply and wisely care for them as the State can do where it has the care of larger numbers. This, I think, is the only reason why the Legislature should ever make such appropriations at all, and when they have gone through, and provided for such institutions, I think it is far wiser, and better in every way for the counties to look after the remaining claims for charity. It seems to me, sir, almost an absurdity for the Legislature to raise by tax broadcast over the State, from all the counties of the State, for the purpose of charities other than what I have named, to be returned to the same counties again to be distributed for charitable purposes. It is much wiser done, in my judgment, by the boards of supervisors. In some of the counties, they may be so fortunate as not to need to raise any money at all by taxation for such purposes, beyond what the Legislature has provided for the support of these State institutions. Not that I am in any sense averse to providing largely for charities—quite the contrary. But, sir, we might as well raise, through the Legislature, by taxation all over the State, money to provide for all the poor of the State, as to do what has been done for the last few years. The subject is so generally understood, Mr. Chairman, that it cannot be necessary for me to descant upon it further. Every delegate in the Convention fully understands what is proposed now by the offering of the substitute for the first section of the report of the Committee on Charities. Of course, if the substitute I have offered is adopted for the first section of the report, it will result in the remainder of the report of the Committee on Charities being stricken out.

Mr. COMSTOCK—It was not my purpose, in submitting the motion this morning to rise and report progress, to preclude debate in the Convention upon the general question whether we shall go on with the amendment and perfection of the article. The simple motion to rise and report was not debatable, and, therefore, I felt myself under the necessity of withdrawing the motion from time to time, on the request of gentlemen who wished to speak. I think my purpose would be better attained by moving that the committee rise and report the article to the Convention, with the recommendation that no action be

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had thereon. That motion, I suppose, will be debatable in this committee, and if the Chair is of that opinion, I will make that motion now.

Mr. ALVORD—I will inform my colleague [Mr. Comstock] that, according to my understanding of parliamentary law, there is but one motion he can make, and that is, to rise and report progress; he cannot couple with it any such condition as he has suggested.

Mr. COMSTOCK—I respectfully submit that the motion to report the article to the Convention with the recommendation that no action be had thereon, is in order, and is also debatable. My colleague [Mr. Alvord], thinks that such a motion cannot be made. While I accord to him superior knowledge of parliamentary law, I think I cannot yield to his view in this instance.

The CHAIRMAN—The Chair is of the opinion that the motion of the gentleman from Onondaga [Mr. Comstock], is not now in order.

Mr. COMSTOCK—Then I renew my motion that the committee do now rise and report progress.

Mr. ALVORD—Will my colleague withdraw his motion for a moment to enable me to say a few words on the pending question.

Mr. COMSTOCK—I will do so.

Mr. ALVORD—I am entirely opposed, Mr. Chairman, to the substitute offered by my friend from Erie [Mr. Prosser]. I think he does not understand the reason why certain lines of charity are under the supervision of the State, and that certain others which are entitled to as much consideration, from the nature of the case, cannot be so situated. The blind, the idiotic, the deaf and dumb, and the insane bear a very small proportion in numbers to those who are objects of charity within the limits of this State. They can, even in as large a State as ours, be taken care of in one or two institutions of the State. They are permitted by that fact to be under a certain course of discipline and management, so far as both regards the mind and the body, and which is uniform in its operation. The light of science can be brought to bear upon their cases vastly better than it can when these are few in numbers and scattered all over the State in different localities. But sir, it is not so with the orphans. The orphans are a numerous body, and it would be an utter impossibility to collect them together in a State institution in consequence of their numbers; not because, as I understand it, that they are not as much the objects of truly meritorious charity as these other cases which the gentleman [Mr. Prosser] has named in his place. And, sir, there are those who are suddenly stricken down by illness or accident. They are large in numbers, and they are scattered all over the State, and it is a physical impossibility to carry them to certain places in the State, which shall be called State institutions, for the purpose of giving them the aid that their necessitous condition requires. Therefore, there is an impossibility, so far as these two classes, and I might name others, being provided for in State institutions, and the only reason why there are certain State institutions, so called in the strict sense of the term, in reference to the other objects of charity I have named, is because of the fewness of their number and of the necessity of uniformity in their care and treatment. But, sir, while I am opposed to the substitute of the gentleman from Erie [Mr. Prosser], I am also opposed to the article before us reported by the Committee on Charities. I believe, sir, that there is sufficient of power in the Legislature to do all that may be necessary in this State in that direction. We have specified in the financial article that we have adopted that no money shall be given either to public or private charities in the State except by a two-thirds vote of the Legislature. In doing that we have thrown all the safeguards necessary around the subject of State donations to charities. I am aware that there are numerous petitions coming up from all parts of the State against giving State aid for sectarian purposes; but I am not aware that this cry which has been raised throughout the State is entitled to any consideration, because, so far as regards the foundations of these charities, in the very nature of the case, in almost all of these institutions of charity throughout our land, so far as regards their administration, they fall into some sectarian hands. They are the creation of benevolent people—people who have organized them because they have an abundance of means—and there are very many instances, both under Protestant and Romanish auspices, where the institutions have been the emanations of the piety of individuals. Such persons consider it a part of their religion that they should perform these acts of charity and kindness to their fellow-beings, and they must of necessity, under the circumstances, gather themselves together, animated by the religious feeling, in order to establish their work of benevolence. But, sir, I have not, in the whole of my experience as a legislator in this State, ever seen any attempt on the part of any religious denomination, merely for the purpose of proselyting or building up their particular church, coming to the Legislature for aid for charitable purposes. I have yet to learn that there has been any charity under the control of a denomination which has attempted to exclude an orphan, or a person diseased or infirm, because he happened to differ with the institution in religious belief. They are open to all who are needy, and all who, as objects of benevolence, are entitled to the aid for which the institution was erected. Now, under these circumstances, while the conservators of these institutions may be of a denominational character, their object is to take care of the poor and needy, for they conceive that to be a part of their religious duty, and they go no further toward proselyting than to extend these necessary benefits to these unfortunate individuals. And, sir, I repeat, that I have never heard of any one of these charities coming before the Legislature of this State, and undertaking to get money from the State treasury ostensibly in aid of their charity, but really for the purpose of building up their sect or religious creed. I believe, sir, that we can leave this matter where it has been left in the past, with the Legislature, and especially with the guards which we have put around it, and that to them eminently belong the duty of providing for charities under this clause of the Constitution. We have said to them that they may give away moneys in charity. Leave it

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for the people represented in the Legislature of this State, as from time to time the exigencies shall demand, to give money in support of these charities, and these legalized institutions. Why, sir, it is necessary to take care of the orphan who has been left without father and mother in this world, for the benefit of society in the future, as it is necessary to take care of the deaf and dumb, the blind, and the insane; it is necessary, that they may start right in their course of life, and that they be nurtured and cared for in their infancy, that they may become good citizens as they reach mature years, as it is necessary to take care of any other object of charity within the limits of the State—and it is right and proper for the great body politic to put their hands into the coffers of the State from time to time, as may be required, and give forth of the means of the people for the purpose of benefiting directly the people themselves, by seeing to it that this great mass of human beings, orphans as they are, shall not come up to be a terror to the people of the State. Believing, sir, that this whole matter can be well left in the hands of the Legislature, and that the people, jealous of their rights, will look carefully, and see to it that there shall be no diversion of the funds of the State in a direction which shall be antagonistic to the religious views or ideas of any particular portion of the people of this State, I trust this Conventton will have made up their minds, before they get through with this matter, that it is best, at least in this respect, to leave well enough alone.

Mr. COMSTOCK—I now renew the motion that the committee do rise and report. I wish to take the sense of the committee upon this matter. Before I take it I desire to say a word upon the substitute offered by the gentleman from Erie [Mr. Prosser]. The substitute is a very simple proposition that the State shall never give any thing to charity, unless the charity is one that is endowed and supported by the State.

Mr. PROSSER—Not endowed.

Mr. COMSTOCK—Supported exclusively by the State; is that it?

Mr. PROSSER—Wholly controlled by the State in its management.

Mr. COMSTOCK—If it be the wish of the Convention to adopt such a proposition as that, I think its proper place is in the financial article. It has no necessary connection with this splendid scheme of charity law, embraced in the report of the Committee on Charities. We seem to forget sometimes all we have done. In the consideration of the financial article we have adopted a clause that no money shall be donated by the Legislature for any charity, whether public or private, except by a vote of two-thirds of the members elected to both houses. I suppose that was the will of the Convention on that subject finally expressed, as we adopted it in the finance article. If the Convention chooses to change its will upon this subject, the proper place to make the change is in the article on finance. I repeat, it has no connection whatever with this scheme of charity which is placed before the committee by the Committee on Charities. I now renew my motion that the committee rise and report, to the end that the Convention may refuse leave to sit again. The question of granting leave will be debatable in the Convention.

The CHAIRMAN—The question is on the motion of the gentleman from Onondaga [Mr, Comstock], that the committee do now rise, report progress, and ask leave to sit again.

Mr. E. BROOKS—I do not understand the Chair to have correctly stated the motion. I understand the motion of the gentleman from Onondaga [Mr. Comstock] is made with the intention of killing this article. That is what it amounts to.

Mr. VAN COTT—I move as an amendment that the committee ask to be discharged from the further consideration of the article; that I believe is the object of the mover.

The CHAIRMAN—The motion is not amendable. The Chair added the words "and ask leave to sit again," to make the motion of the gentleman from Onondaga [Mr. Comstock] perfect and regular.

Mr. COMSTOCK—I supposed that the motion in form would include the asking leave to sit again. I shall oppose granting leave, and it will then be for the Convention to decide whether they will go on with this subject.

The question was put on the motion of Mr. Comstock, that the committee rise, report progress and ask leave to sit again, and it was declared carried.

Mr. E. BROOKS—I call for a division.

The question was again put on the motion of Mr. Comstock, and, on a division, it was declared carried, by a vote of 41 ayes—the noes not being counted.

Mr. E. BROOKS—I call for a count. I insist upon my rights as a member of this Convention to have a count of the noes.

The CHAIRMAN called for the members voting in the negative to rise, and on a count they were declared to be 28.

Mr. E. BROOKS—There is no quorum present.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. OPDYKE, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on Charities and Charitable Institutions, had made some progress therein, and on a vote being taken, it being discovered that there was no quorum present, had instructed their chairman to report that fact to the Convention.

Mr. ALVORD—I ask the unanimous consent of the Convention that we again resolve ourselves into Committee of the Whole upon this report.

Mr. FOLGER—I object.

The PRESIDENT directed the Secretary to call the roll of the Convention.

Mr. MERRITT—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Merritt, and it was declared lost.

The SECRETARY proceeded with the call of the roll of the Convention, when the following delegates responded to their names:

Messrs. A. F. Allen, C. L. Allen, Alvord, Archer, Baker, Barto, Beadle, Bell, Bergen, E. Brooks, E. A. Brown, Carpenter, Case, Chesebro, Cochran,

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Comstock, Corning, Curtis, Daly, Develin, Eddy, Ely, Ferry, Folger, Fowler, Fullerton, Gould, Grant, Graves, Hadley, Hale, Hammond, Hatch, Hiscock, Hitchcock, Ketcham, Kinney, Krum, Lapham, A. Lawrence, Lee, McDonald, Merritt, Miller, Morris, Opdyke, Potter, President, Prosser, Reynolds, Robertson, Roy, Rumsey, Seaver, Sheldon, Smith, Spencer, Stratton, S. Townsend, Van Cott, Wakeman, Wales, Wickham, Williams —64.

The PRESIDENT—If there is no motion made for a call of the Convention the only alternative is for the Chair to declare the Convention adjourned until to-morrow morning at ten o'clock.

No motion was made for a call of the Convention.

So the Convention adjourned.

THURSDAY, January 16, 1868.

The Convention met pursuant to adjournment.

Prayer was offered by Rev. Dr. SPRAGUE.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. GOULD asked leave of absence for Mr. Hutchins until Wednesday next, in consequence of the death of his father-in-law.

There being no objection, leave was granted.

Mr. GOULD asked leave of absence for Mr. Mattice until Wednesday next, in consequence of the death of his father.

There being no objection, leave was granted.

Mr. GOULD asked leave of absence for Mr. Axtell, who is absent attending a soldiers' convention at Philadelphia, until Monday next.

Objection being made, the question was put on granting leave, and it was denied.

Mr. GRAVES offered the following resolution:

WHEREAS, The work of this Convention has been delayed, and its session unnecessarily extended by the neglect of many of its members to attend its daily sessions, to the prejudice of the public rights and the great annoyance of those members who have been punctual in the discharge of their duties; therefore,

Resolved, That the honorable Legislature, now in session in this city, be earnestly solicited to immediately amend the act, calling this Convention, so as to clothe it with power to compel the attendance of its members, and to inflict such punishment for non-attendance as the public interest demands, and justice requires.

Mr. COMSTOCK—Mr. President—

The PRESIDENT—The gentleman from Onondaga [Mr. Comstock], rising to debate this resolution, it lies upon the table under the rule.

Mr. ARCHER—I offer the following resolution:

"*Resolved*, That Frank M. Jones be, and he hereby is appointed assistant sergeant-at-arms, in place of John H. Kemper.

Mr. GRAVES—I ask to amend that resolution, by inserting the name of R. T. Windsor.

Mr. ALVORD—If I understand aright, under a resolution which was passed yesterday, offered by the gentleman from Jefferson [Mr. Bell], the question in regard to those officers is before the President of the Convention, and until he shall act thereon, by recommending to this Convention, or until that resolution shall be rescinded, this resolution is out of order.

The PRESIDENT—The Chair does not understand that he has power in any contingency to appoint an assistant sergeant-at-arms. The purport of the resolution adopted yesterday seemed to be that none of the vacancies now existing in the body should be filled unless the presiding officer should deem it necessary. He did not suppose that he had any discretion as to the matter of the assistant sergeant-at-arms.

Mr. MERRITT—It is well understood that the assistant sergeant-at-arms has been appointed Sergeant-at-Arms in the Senate; therefore, that vacancy is one referred to in the resolution. It seems to me, therefore, it is not competent to fill it without reconsideration of the resolution passed yesterday.

Mr. GOULD—I move that the resolution be laid upon the table.

The question was put on the motion of Mr. Gould, and it was declared carried.

The Convention again resolved itself into Committee of the Whole, on the report of the Committee on Charities and Charitable Institutions, Mr. OPDYKE, of New York, in the chair.

The CHAIRMAN announced the pending question to be the motion of Mr. Comstock, that the committee now rise and report progress.

Mr. COMSTOCK—As it seems to be the wish of some members of the committee to debate further on this subject, I withdraw the motion for the time, giving notice, however, that at some time before the close of the morning session I shall renew it.

The CHAIRMAN—The gentleman having withdrawn his motion, the question reverts upon the proposition of the gentleman from Erie [Mr. Prosser], as a substitute for the first section.

The SECRETARY proceeded to read the substitute offered by Mr. Prosser, as follows:

"No appropriation for charitable purposes shall be made by the Legislature after the adoption of this Constitution, except to such institutions as shall be wholly under the control and management of the State."

Mr. BELL—I am of the opinion that several of these institutions are not wholly under the control of the State; that they are managed by trustees, or directors, chosen from voluntary associations. They have been recognized by the State, but still they cannot properly be considered State institutions. They partake of the donations from the State, but still they are managed by private individuals, as for instance the deaf and dumb asylum of New York, which is a very important and a very necessary institution, is managed by an association of private individuals. They choose their own directors and trustees, and receive an annual appropriation from the State of from thirty to forty-five thousand dollars. The same may be said of the institution for the blind. Therefore, I move to amend the amendment in that particular, so that it shall read "wholly or in part under the control of the State." I also wish to add to that amendment as follows:

"But in case private benefactions shall prove insufficient for the proper care and support of the

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local public charities, the several boards of supervisors and municipal authorities may by tax, or otherwise, supply such deficiency."

The CHAIRMAN—The Chair will inform the gentleman from Jefferson [Mr. Bell], that an amendment is not in order. The gentleman from Erie [Mr. Prosser] may consent to a modification of his amendment.

Mr. BELL—Then I will withdraw it until an opportunity is offered to make the amendment.

Mr. PROSSER—I will suggest to the gentleman from Jefferson [Mr. Bell], that perhaps his ideas may be reached under this phraseology: "under the general management of the State."

Mr. BELL—I do not know that it is general, I think the management is wholly invested in trustees. The State has no management further than making appropriations.

Mr. PROSSER—Are they not subject to the State control at all?

Mr. BELL—They are subject to its visitation, and are required to report annually to the Legislature. I am not particular, however, which form it takes.

Mr. E. BROOKS—I will state, with the consent of the gentleman from Jefferson [Mr. Bell], how these institutions are managed. The deaf and dumb, the blind, and the idiotic asylum and all the leading institutions of the State are under the management of boards of trustees. In regard to the deaf and dumb institution, the State a few years since thought proper, at the instance of the trustees, I believe, to take control of that institution. They did so for about one year and found it a very great elephant, entirely uncontrollable through the State officers. They had no time to give to the superintendence and care of the institution; and by an act of the Legislature the institution was returned to the management of the board of trustees. The amendment of the gentleman from Erie [Mr. Prosser], literally interpreted, would deny to all these institutions any benefit whatsoever from the general appropriations of the State. I think it, therefore, entirely obnoxious in that respect; and I do not think that the amendment suggested by the gentleman from Jefferson [Mr. Bell], is calculated to reach the difficulty, if difficulty there be. Nor do I think there is really any proper discrimination in regard to a deaf and dumb person, or a blind person, or an idiotic person, belonging to a county of this State, if local charities are to be supported entirely by localities, than there is in regard to these different general charities which are presented for our consideration. The argument has been made here, that after all, it is taking the tax from the people in one way, and imposing it upon the people in another. If that rule is to apply, inasmuch as the deaf and dumb, and blind are sent from the respective counties of this State there would be as much justice in imposing upon the boards of supervisors the duty of raising the necessary money by tax for supporting this class of persons, as there would be for any other class. But, in my judgment the whole proposition is erroneous, unjust, and ought to be rejected by the Convention. Take the city of New York, for example, and I illustrated it very briefly yesterday. There is in the New York hospital a very large number of persons, and nearly three-fourths of that number are composed of seamen, most of them, or many of them foreign born. On coming into the port of New York from other ports, they become maimed and hurt and in various ways they are dependent. In this condition they are sent to the New York hospital. With what justice can the State say that the board of supervisors should impose by local tax the necessary means for the support of this class of persons? There are a great many people in the city of New York from time to time who are drawn there by various considerations, some suffering from poverty, some waylaid and distressed in various ways, and these enter into some of our institutions for support. As a general rule this class of persons are supported by private charity. There are fifty such charities in the city of New York at least. Orphan asylums, half orphan asylums, nurseries, children's hospitals, hospitals for mature people, dispensaries, etc., etc. Take, for example, the dispensaries of the State. A little sum of money is raised, a few thousand dollars, in order to give medicine to the sick poor, whereby a great many lives are saved, and a great deal of sickness prevented. A majority of these persons are very apt to be transient persons, and when you realize, for example, that between two and three hundred thousand immigrants arrive at the port of New York every year, you must see that there is a necessity for making some general provision, outside and beyond any locality, for taking care of them. I do not believe we can manage this thing better in the future than in the past, except by that proper supervision which may be created by the Legislature through a board of commissioners, or which may be authorized by this Convention and made mandatory upon the Legislature. I hope, sir, that the amendment which has been made and the amendment which is suggested, will both be voted down, and that the question will be left where it is.

Mr. BELL—I did not suppose when I gave way for an explanation that the gentleman was going to make a speech.

Mr. E. BROOKS—I thought the gentleman was through.

Mr. BELL—I offered this amendment, which I understand is now accepted by the mover, for this reason: most of these institutions were in the main originally organized by private individuals of means and large benevolence. It never occurred to them that they would apply to the State for the means for support until they found that the State was willing to make such contributions; and my observation is that as soon as the State took these matters under its control the original founders, to a great extent, relaxed their benevolent efforts, and relied mainly upon the State for their support. This has done a great deal of harm in the way of withering the benevolence of the individuals who founded them. They have not made that effort for private benefaction that they might have done or would have done had they not supposed that any deficiency that might exist for the maintenance and support of those under their care would be made up from the State treasury. This, I consider, sir, a great misfortune; I believe that these institutions should be conducted mainly

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by the charitable who have means at their disposal to supply all their needs; for charity is reciprocal in its operation. While the charitable are doing good they are also receiving good themselves; and I do not desire that we shall incorporate in this instrument any provision that will have a tendency in any degree to relax the efforts of the charitable throughout this State. But should it happen that a sufficient amount of means for the care and support of the inmates in these institutions could not be obtained from private individuals there should be some relief provided; and I think the proper relief is through the different local authorities, by the authorities of the county in which they are located. This amounts in effect to the present State appropriation of eighty thousand dollars. It is always provided in that appropriation that it shall be divided among the several counties of the State, in proportion to their equalized assessed valuation; and that it shall be distributed on that plan. Now here is unnecessary machinery, of making an appropriation of eighty or one hundred thousand dollars, taxing the people of the State for that amount, paying it into the State treasury, and then paying it back to these institutions. Why not allow this appropriation to be made by the local authorities, collected from the various counties and applied directly to the object for which it is levied and appropriated? We would save the percentage and a large amount of trouble, to say nothing more. Then another argument in favor of this plan is that no unnecessary appropriation could be obtained by the municipal authorities, or by the board of supervisors. They must have evidence that the appropriation was necessary, that it would be well expended. The whole subject would be under their immediate eye, and cannot be subject to that abuse that it may be if given in gross by the Legislature. I therefore offer the amendment, with the consent of the mover.

Mr. PROSSER—I consent to that amendment, as it seems necessary.

The SECRETARY proceeded to read the amendment offered by Mr. Bell, as follows:

"But in case private benefactions shall prove insufficient for the proper care and support of the local public charities, the several boards of supervisors and municipal authorities, may by tax, or otherwise, supply such defficiency.

Mr. GRAVES—Is this amendment in order?

The CHAIRMAN—It is not an amendment. It is a modification accepted by the mover.

Mr. GRAVES—Is the original amendment and modification in order? If I understand the question it is upon the first section of the report of the Committee on Charities. That section refers only to the appointment of charitable commissions, to take charge of charitable institutions as they now exist, and to report that examination to the Legislature, and also to report any omission of duty on the part of the trustees. This amendment, offered here, relates to the whole report, and not to the section under consideration.

The CHAIRMAN—When the substitute was first offered, the Chair rejected it as out of order on the ground that it was a substitute for the whole article. The mover subsequently presented it is a substitute for the first section, and in that form it has been accepted by the Chair and has been considered; consequently the Chair cannot change its decision.

Mr. MILLER—I am opposed, Mr. Chairman, to restricting the aid of the State to merely those institutions that are owned and controlled by the State; and if I understand aright the two amendments now pending, they propose some such restriction as this. I am of the opinion that, as a matter of economy, and as a matter of wisdom, we had better allow private philanthropic individuals to endow charitable institutions, and to look to the State for State aid, if they prove to be of public benefit, and of public importance. It seems to me that this is wise as a matter of economy. We all recognize that the State owes it as a duty to the poor and to the unfortunate people of the State, to provide some relief; but if private, liberal minded individuals will from their private means defray nineteen-twentieths of this expense, and leave but one-twentieth for the State to supply, it seems to me wise to accept of such a donation, and not by constitutional restrictions deny ourselves the benefit of such liberality. But, sir, I am in favor of the principle that the State shall have the right of visitation wherever they grant any aid. I think the right of visitation should go to this extent, that any institution that demands aid of the State shall show its accounts, shall be subject to visitation, and show that the money that it has received from the State has been properly and judiciously applied, I am not so positve that we had better have this article in the Constitution. I know that the subject is now, by the present Constitution, under the control of the Legislature, and in that respect it is, perhaps, left more free to be modified as circumstances shall dictate as best. But I am quite positive that if we are to put any thing upon this subject into the Constitution, we should not tie up the hands of the State, so as to restrain and restrict the State from giving aid to charities that are in part under the control of individuals, and are supported in part by private donations. Let me name an instance, an institution that is not local but one which, in its benefits, reaches to the whole State, and perhaps even further than that. Take the case of the Inebriate Asylum established at Binghamton. That institution, as many of the members of this Convention know, has been under a cloud for a number of years, and yet is receiving by law aid from the State, because it receives ten per cent of the license money. That institution is receiving over a hundred thousand dollars a year. I think, under its present organization and management, that institution is doing much good and is calculated to do much good; but I do insist that if the people of this State are to contribute to that institution or to any other, such an amount of money, it is very proper and it is necessary that it shall be subject to visitation by the proper authority, so that the people may know how their money is being used. I mention the institution at Binghamton merely as an illustration. There are others of this class that receive aid from the State, standing in the same category. Much money has been raised by private donations and private liberality and gen-

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erosity, and they are now receiving aid from the State, and I insist that, as far as they do receive aid from the State, wherever State aid goes there should be some visitation under the direction and authority of the State. In reference to the amendment of the gentleman from Erie [Mr. Prosser], I may state this fact, that the board of public charities in the State of Massachusetts, which has been in existence for three or four years to the very great acceptance of the people of that State, and I think to the great benefit of that State; that board recommends in their report of this year that the State shall not build any more State institutions but shall confine itself for the present to assisting institutions founded upon private donations as the more economical and best way of reaching the objects of charity. Now I would not tie up the legislators of this State so that they could not exercise their duty in the direction of charities in any other way than this; but I do insist that when such a board speaks after the experience of three or four years and says it is the best way, that we ought not to prohibit ourselves by constitutional restriction from adopting and using it.

Mr. GOULD—I fully concur in the remarks of the gentleman who has just taken his seat [Mr. Miller], and I desire to give one or two reasons in addition to those that have been given by the gentleman from Delaware [Mr. Miller], why it is desirable that this change proposed by the gentleman from Erie [Mr. Prosser] should not take place. I suppose that we all recognize it to be the duty of the State to do those things, and to perform those functions on behalf of its inhabitants, which they are utterly incapable of performing for themselves. There are many charities which cannot be performed by private means. For instance, if the amendment of the gentleman from Erie [Mr. Prosser] should be adopted, it will utterly exclude all State aid from the hospitals of the State. Let us see what the hospitals have done for the public, what they have done for the private comfort and convenience of individuals, which could not have been performed if those institutions had not been in existence. There are many diseases which are very rarely found in private practice which are multiplied in the hospitals. Physicians who have charge of hospitals have an opportunity of seeing them in the aggregate, and they are enabled to learn the law which regulates them and to discover the remedies by which those diseases may be overcome. Let me state a single instance. There is a disease of the bowels which is very frequent, and which has heretofore been almost always confounded with bilious colic, and yet these diseases have always proved fatal. There never has been a single instance until recently in which any cure of them has been effected. Physicians in private practice were utterly unable to discriminate between these two diseases, many of whose symptoms were so entirely similar. It is caused by the introduction of a foreign body into the portion of the bowels called the *appendix vermiformis*. The physicians of the hospital at Troy have discovered the diagnosis of those two diseases. They have discovered surgical remedies by which that disease may be entirely overcome so that men need not die, as they have always died in times past when this disease makes its appearance. That discovery was made in the Marshall infirmary at Troy, an institution which is a beneficiary of this State, which has been fostered by its bounty, and without that fostering care this discovery would not have been made. Any gentleman who swallows a cherry stone, a piece of oyster shell or other similar body accidentally is liable to this disease. He may have it, or may not. We may, therefore, any one of us be indebted to this discovery for the preservation of our lives. Now, I contend that this discovery, beneficial alike to the rich and the poor, in absolute money value, far transcends any amount which the State has given to the Marshall infirmary. Then again, there is a large class of female diseases, the remedies for which have been discovered in the hospitals devoted to the special diseases of females, which never could have been discovered in private practice. There is one of the most terrible diseases of the female sex, known as the *recto vaginæ fistula*. There was no means known of remedying that difficulty until very recently; but by hospital practice the *silver suture* has been applied, which is an absolute remedy for it and restores those unhappy females to health and comfort and usefulness. Many instances of this kind could be given where it was utterly impossible without the aid of hospitals and the range of observation which they afford, diagnose the diseases and to discover the remedies adapted to their cure. And now shall we deliberately lay it down in the fundamental law, that these institutions which have done so much for humanity shall be utterly thrown out of existence for want of State charity? There are many other of these institutions which must go down unless they have the aid of the State—institutions which have been exceedingly beneficent in their operation, which have done a vast and incalculable amount of good, and which must go down unless they have the aid of the State. I for one do not believe in cutting off these beneficent sources of charity. I do not believe that the people of this State desire to cut them off, and I do believe that it would be one great cause of having this Constitution rejected by the people if it should contain a provision of this character. There is another very important class of institutions—the orphan asylums. Many of these institutions are so deeply radicated in the affections of the people that they would go on whether they had State aid or not; but some of the most important and some of the most beneficent of these institutions would go down unless they had the aid of the State. These institutions are situated along the great lines of travel—along the Central railroad, along the Hudson river; and those counties lying on either side are not provided with these orphan asylums. The consequence is that the orphan children in these contiguous counties filter into those which are provided with these institutions; and if there was no State aid the whole care of these orphans would be cast on the counties of the State situated on the great lines of travel. I do not see any justice in this or any good reason for it. I do not see why the counties on the great lines of travel should be compelled to support those

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orphans who reside on either side, north and south. I think there is a manifest justice in the aid given to them by the State in order to compensate, in some degree, those counties for the orphans which they maintain, who were born and have their residence out of those counties. These orphan asylums are really doing an immense amount of good. If you examine the statistics of our State prisons you will find that very considerably more than one-half of the prisoners of this State were orphans in their youth, so that the absence of parental care and parental instruction in early life has been the cause of their falling into the ways of crime. By taking these children in early life and giving them a virtuous education we may deter them from crime and save the expense of their trial and imprisonment as well as the amount of their depredations. It is therefore an economical application of the funds of the State; for we may rest assured that the orphan who is uneducated and who falls into the ways of crime will tax the community to ten times the extent by his course that he would if he were reputably and respectably educated in one of these orphan asylums. But it has been said by the distinguished gentleman from Onondaga [Mr. Comstock] that there is very great danger in this matter. In my opinion the article provided by the Committee on Charities meets the case exactly, and obviates those dangers. He has cited the old statutes in England of mortmain and of uses and trusts and charitable uses, and has told us that these laws were passed in order to meet a very great and prevailing difficulty. Undoubtedly they were; but when those acts were passed the church was not divided into sects. It was one; and it was found by experience that the priests of that church stood like vampires and ghouls by the bedside of dying men and absolutely robbed the heirs—the wife and children—of their just and legitimate inheritance. This was a very great evil doubtless. It was one that required all the energies and all the ingenuity of the Legislature to prevent. But our forefathers in England did not resort to that cowardly maxim that what was not cured must be endured, but rather to the better maxim that what could not be endured must be cured; and they did cure it. But we are in different circumstances now. The church is divided into many sects. Each one of these sects is a good and sufficient watch on the others; and if the amendment of the gentleman from Richmond [Mr. Curtis] is adopted, that will furnish ample security against the ecclesiastical spoliation so justly complained of. If these commissioners who are to watch over the charities of the State, are prevented from being at any time a majority of any one denomination, then each denomination will keep watch over the others; and statutes of uses and trusts and charitable uses will not be needed. The circumstances in this State now are entirely different from what they were in England when the law referred to was first adopted. It seems to me that the people of this State are almost unanimous in regard to this matter. We have had petitions without number praying that no sectarian appropriations should be made. It seems to me that this report meets the case exactly; that of having no appropriations made by the Legislature except such as are recommended by this board where there is not a majority of any one denomination, that will meet the case exactly, and we prevent any sectarian legislation whatever. I trust, therefore, that the amendment of the gentleman from Erie [Mr. Prosser] will not be adopted, and that we will concur in that proposed by the gentleman from Richmond [Mr. Curtis].

Mr. SMITH—I am very much inclined to favor the disposition of this whole matter indicated by the gentleman from Onondaga [Mr. Comstock], and leave it where it now rests, with the Legislature. But before giving my vote upon the question, there is a matter upon which I desire information. It is well known to you, sir, and to all the members of this body, that we have received various memorials and petitions from all parts of the State against donations for sectarian purposes. They ask that an inhibition upon the Legislature in relation to this matter be placed in the Constitution; and I suppose this demand is founded upon the idea very generally prevalent throughout the State, that there has been, in the last few years, in the donations for charitable purposes, a great disproportion in favor of the Roman Catholics. Now, whether this be well founded or not, I do not know; and it is upon this point that I desire information. At an early stage of our session there was laid upon our tables a statement headed, "Shall the State support the churches?" By this statement it appears that in 1866, there was donated by the State for sectarian purposes $129,025.49, and that of this amount $124,174.14 was given to the Roman Catholics, or to institutions controlled by them exclusively. It would seem that more than nine-tenths of the whole amount donated was, from some cause, given to the Roman Catholics. Now, whether this statement be correct or not, I am unable to say, for I have not verified it. It refers to the Comptroller's report, and to the Session Laws of that year. But from the various institutions named here which were the recipients of the State bounty, I should judge the statement to be correct. The names of the institutions indicate, in at least nine-tenths of the cases, that they are Roman Catholic. More than two-thirds of them have the prefix of "St." and it is fair to presume that all these saints are Catholics, though I would not be quite willing to admit that all the Catholics are saints. Several others, not having that prefix, also indicate that they are Catholic in their character. I do not object to donations to Catholic institutions. They should have their fair share. They should be treated like all others, and the State should make no distinction whatever among religious denominations. If the Legislature has discriminated in favor of the Catholics for political purposes, or from other considerations, then there is reason for listening to the voice of the people when they demand that there shall be an inhibition in the Constitution against these donations. I make these suggestions, and refer to this document, for the purpose of eliciting an explanation, if an explanation can be made.

Mr. CASSIDY—That document to which the gentleman from Fulton [Mr. Smith] refers was

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circulated on the desks of members early in the session of the Convention. It was evidently got up by preconcert. It was circulated throughout the State, and, as a consequence, numerous petitions have come in protesting against donating the public money for sectarian purposes. I do not hesitate to say that it is false from beginning to end. It has all the characteristics of a forgery. It has been exposed as a deliberate and well contrived falsehood. Nobody disputes it. It has no name signed to it; it is an anonymous pamphlet, a half sheet, and has been largely circulated through the newspapers. It impressed the whole country with the belief that it was correct, because it detailed and specified item after item. The attention of a member of the Committee on Ways and Means in the last House of Assembly—the editor of the Utica *Herald*, who had reported that year to sustain the donations for charitable purposes—was drawn to it. That year, the preceding year and several years before, the two houses of the Legislature were in the hands of the republican party. I merely allude to this as a fact to illustrate the falsehood of the statement. The rule which obtained in the Legislature was to grant these donations to the several counties in proportion to the number of the inmates of the public institutions. There was no discrimination in favor of the Roman Catholics. On the contrary, a careful study of the figures will show that the Roman Catholics, so far from receiving an undue proportion, received a very, very small proportion of what would be due to them according to their relative numbers. The editor of the Utica *Herald*, a member of the committee, exposed this fundamental error and falsehood of the statement, and gave the authority of his own name to the contradiction.

Mr. E. BROOKS—I have it here.

Mr. CASSIDY—If the gentleman will read what he says I think it will make the refutation complete.

Mr. E. BROOKS—I am glad the honorable gentleman from Fulton [Mr. Smith] has raised this question, because I think it is well that we should, in deliberating on a question of so much importance, come at the true state of the case. I have the memorial to which my friend has alluded, and although it may not go to the extent of falsehood mentioned by the honorable gentleman from Albany [Mr. Cassidy], that it is an entire falsehood, it comes under one of those definitions laid down by Lord Paley, where he says that a man may state ninety-nine facts, and every one of them be a falsehood, because when the hundredth fact is given it overthrows all that has been stated before. This is precisely one of those cases. It has just enough truth in it to make a pretension; but, in point of fact and result, it is no true statement at all. Now, one of the facts cited in this memorial as evidence of sectarian partiality is $8,000 donated to the St. Mary's Hospital at Rochester; but it is distinctly stated in the bill to be for the expenditure in the care and reception of soldiers, under the direction of Dr. Backus, the medical officer of the post. Now here is this $8,000 put down as a sectarian appropriation for the support of Roman Catholics, while in the very language of the act it is declared that the money shall be expended under the direction of the military officer, for the support of soldiers in that place. They had to take this hospital in Rochester for the soldiers because there was no other proper place to receive them. Let me state another fact to illustrate the subterfuge of this memorial. The Elmira Female College, a Protestant institution, received $25,000 as a similar donation, but it is not mentioned in the array of facts at all, which purports to be a true statement of all the facts in the case. My friend from Albany [Mr. Cassidy] has alluded to what the editor of the Utica Herald said in reference to this memorial. Every man who knows him, knows that he was a very prominent member of the last Legislature, and a member of the Committee of Ways and Means; I mean Mr. Roberts, of Utica. Upon this subject of orphan asylums he says in reply to this memorial:

"All reorganized orphan asylums and established hospitals are included, and moneys are distributed in proportion to the number of orphans and patients cared for." That is all; in proportion to the number of orphans cared for in these respective counties. Says some gentleman, "a large number of these orphans are the children of Roman Catholic parents or are Roman Catholics themselves." What of it? The tax is made only in proportion to the assessment made upon the respective counties; and if there happens to be more of this denomination in the institutions, it only shows that more care is exercised by them in providing for their own poor than is exercised by those belonging to other denominations. "The appropriation," he adds, "is given for orphans and hospital patients, according to their number." "We have not calculated," he says, "what sect has the most of these unfortunate creatures under its care. Provided relief is offered them by the State under any circumstances, no system can be more impartial and more just than a per capita distribution, if, under such a rule, the Catholics receive for disbursement more than the Protestants. And he very properly asks, "shall complaint be made because the former care for more orphans and more patients than the latter." Sir, that is the whole story. There are more of these people gathered up in the highways and byways and streets of our cities and placed in institutions, than those of any other denomination; and when the appropriation is made, it is made upon the basis of the assessment of money, and distributed to the counties in the same proportion." I think this answers the very proper inquiry raised by my friend from Fulton [Mr. Smith], as to the correctness of the statements which have been made. One word more, with the indulgence of the committee, for being the chairman of the Committee on Charities, I naturally feel a great interest in a question like this—and this in reference to the amendment of my colleague from Richmond [Mr. Curtis] and in reference to the remarks made by my friend from Columbia [Mr. Gould]. The Committee on Charities and Charitable Institutions labored six weeks very diligently in examining this subject. If my friend from Onondaga

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[Mr. Comstock] will pardon me, it was in this collection and in this spirit that I resisted the motion made yesterday to undo the labors of a committee, who had given so much attention to this subject, by an attempt to dismiss it after a discussion of an hour or two. I thought that unjust. We had the subject raised by my friend from Richmond [Mr. Curtis] in the committee. A motion was made there that this commission should consist of persons belonging to different denominations. Well, sir, when we realize that there are at least some twenty active denominations in this State it would be almost impossible, quite impossible numerically, to select eight men from these twenty denominations, and it was, therefore, left very appropriately in the discretion of the Governor and the Legislature to say who those eight persons should be, the presumption being that they would be selected from those best fitted to discharge this important duty. Now, a word in regard to what has been said in reference to the question of sects by my friend from Columbia [Mr. Gould]. He would have no sectarian appropriations made; that is, he would have no money appropriated to Catholic institutions *per se*, or to Methodist institutions, or to Presbyterian or Episcopalian institutions *per se*. Sir, you cannot distinguish in this way in the dispensation of the charities of the State. Go into the institution for the deaf and dumb, for example, and you will find that a very large majority of the trustees of that body are Protestants—not a Catholic there; not that they are excluded, but that as a matter of fact they are not there. Nor are they in the institutions for the education of the blind, for the care of the insane, or in any of the leading institutions of the State for which the State charities are appropriated. I think that every gentleman who reflects upon this subject will come to the conclusion that it is wise not to name directly or indirectly any sect in connection with this matter, or, in dispensing charities, to have any thing to do with sects, even by suggestion.

Mr. GOULD—I wish to say one word in answer to the gentleman who has just taken his seat. I did not take ground against sectarian appropriations *per se*. I merely wished to secure a benefit to the State so that, if charity was given to a sectarian institution, and if we have a board of examiners such as is proposed by this committee, and if each of them belongs to a different denomination, they will take care that no appropriation is made to any single sect, as such, unless that sect yields an advantage to the whole community which will compensate for it. Now, for instance, there are the Sisters of Charity. I suppose there is not a Protestant denomination on earth that would not be willing to have appropriations made to them, for they really do an amount of good to the community which no Protestant would wish to see destroyed. I only desire that no sectarian appropriations shall be made (and that I understand to be the prayer of the numerous petitions that have come before us) for sectarian purposes, or for the advancement of the faith of any particular sect; and that if they ask for appropriations they shall give guaranties that they will return an amount of good to the community generally, sufficient to compensate for what they receive from the community. It is undoubtedly true that we cannot have all the various sects represented. Nor is it necessary that they should be, if the leading sects are represented, each one will take care that the other will not obtain an undue advantage over the other.

Mr. CURTIS—If it is in order, I should like to say one word in explanation.

The CHAIRMAN—It is in order.

Mr. CURTIS—The Convention has already decided that the State may give aid to charitable institutions. There are a large number of petitions before us, requesting the Convention to decree that no aid shall be given with a sectarian bias. The article reported by my friend [Mr. E. Brooks] expressly provides that none of this State aid shall be given to any institution, a majority of whose managers are of any particular sect. The article, therefore, concedes the principle that there is to be some safeguard against sectarian bias. That being conceded, wisely or unwisely, it seems to me proper to place that safeguard where I propose to place it, and not where it is placed in the article. That is the substance of my proposition.

Mr. PROSSER—At the suggestion of some delegates I assent to the following modification:

"No appropriations for charitable purposes shall be made by the Legislature after the adoption of this Constitution, except to institutions over which the State shall exercise a general supervision and management."

Mr. DUGANNE — I think, sir, that in the course of my life, I may have become interested from time to time in the question of private and political benevolence as much as any of my honorable colleagues, and I have been always of the impression that, could it be made practicable, it would be wise to sever and divorce completely the State aid from private aid. My grounds for this belief were that it was difficult, sometimes impossible, to distinguish how much of the support asked for by private institutions would be devoted to the object of charity alone, and how much might be devoted by some of those institutions in proselyting to particular creeds. And therefore, as I may say, my objection to it has been founded upon that objection, which operates equally in every free mind against the union of church and State in any particular. But, sir, I recognize in the report of this committee an earnest effort to strike the golden mean between indiscriminate charity and that charity which is to be alone distributed by the State in its capacity of a great commonwealth. I see very little objection, Mr. Chairman, to the report as submitted before us. It provides against that particular objection which is founded upon the well-based fear that charity may be debased or misappropriated to sectarian purposes, and if this report and the article could have eliminated from it the other objection on which the argument of my friend from Ontario was founded, in reference to the perpetuation of gifts in trusts, so as to aggregate landed estate in possession of any particular class or sect, I think that we could reach the gist of the whole matter, and that the report would be entirely unobjectionable. I propose, therefore, if

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I have the opportunity—I believe it is not now in order—to submit an amendment which at the same time that it strengthens the universal character of the report, will rid it of the objection which is based upon the clause in line 17. I am aware, and I think that every other gentleman will bear me witness, that there is a process of aggregation of landed estates going on now under the auspices of a sectarian regime which must produce at some future time a state of affairs approximating very much to that which was occasioned by this condition of *mortmain* in England. I think that it is a subject of daily report that large sectarian institutions based upon the aggregation and possession of real estate are being founded all over this country—institutions which I may say are entirely antagonistic to the spirit of republicanism as we understand it. I need not say what these institutions are; they will occur to every member of the Convention. But it is well for us in a Constitutional Convention, knowing, as we do the rapidity with which certain faiths and creeds stride toward the possession of property, and thereby an aggregation of power—it is well for us as republicans, and as members of a republican State, to insert in our Constitution some clause which will arrest this march of sectarian power, at the proper time, while it can be arrested. I say that I am in favor of this report, and I shall vote for it, if I have the opportunity to propose such amendments as I think will render it as nearly perfect as an article can be in the Constitution.

Mr. ALVORD—It has been well remarked by the gentleman from Richmond [Mr. E. Brooks], that there are a great many ways of telling a falsehood extant in the world, and I have the pleasure now of presenting to this Convention, the mode in which these appropriations are enumerated in this anonymous communication, were made by the Legislature. The act appropropriates to these orphan asylums, home associations, etc., throughout the State, eighty thousand dollars; sixty thousand dollars more than is mentioned here, to start with. The following amounts subject to the aforesaid conditions are hereby appropriated as follows:

Mr. PROSSER—What are the conditions?

Mr. ALVORD—I was going to read them to you. The conditions are:

"The Treasurer shall pay, on the warrant of the Comptroller, out of moneys in the treasury not otherwise appropriated, the several amounts specified in this act, to the persons duly authorized to receive the same; but no amount here indicated shall be paid to any institution or person representing it, unless otherwise ordered, till the president and secretary, or the managers of such institution, shall have made to him a report of their operations, attested by their official seal, pursuant to chapter 419 of the Laws of 1864, entitled 'An act requiring officers of scientific and eleemosynary institutions to make annual reports;' and it shall the duty of the Comptroller to withhold any appropriation here made to any hospital, asylum, association or institution, when it shall appear that the money so appropriated will not be duly and properly made for the purposes specified in its charter and constitution and by-laws, or as defined in this act; and he shall report to the Legislature the grounds and causes for withholding such appropriation; but he shall not be required henceforth to transmit the reports of any such scientific or eleemosynary institution to the Legislature, except when the same shall be demanded by resolution."

Then it goes on to say:

"The following amounts, subject to the aforesaid conditions, are hereby appropriated as follows, viz.: The orphan asylums, homes for the friendless, and other charitable institutions of like character, for their maintenance, eighty thousand dollars, to be paid as follows, namely: the said amount shall be divided among the several counties in proportion to their respective valuations, as the same shall have been established by the State board of equalization. The sums thus awarded to each county shall be paid to the following incorporated orphan asylums and institutions in proportion to the number of orphans and homeless persons maintained in them during the present fiscal year, except in the county of Cayuga."

Now that gentlemen have this matter before them, let me read one or two of these special appropriations, which they will find have neither name nor place in this anonymous document.

"The Albany orphan asylum, the Albany guardian society and home for the friendless, the association of the sheltering arms in the city of New York, the Brooklyn orphan asylum, the Brooklyn industrial school association and home for destitute children, the Buffalo orphan asylum, the Cayuga asylum for orphans, the children's day home at Troy."

Mr. BELL—I would inquire of the gentleman from Onondaga [Mr. Alvord] if he is reading from the act of 1866, or from the act of 1867?

Mr. ALVORD—I am reading from the act of 1866, which purports to be this very act, this very chapter is quoted in this anonymous communication sent in to this Convention, and I therefore pronounce without hesitation that it is from the beginning to the end a falsehood. No fairer, no more equal distribution of aid by the State to institutions of this kind was ever made under the light of the sun than is made under chapter 774 of the Laws of 1866; and I repeat what I said yesterday, that in all my legislative experience, in all these cases where State aid has been granted to institutions of this character, it has been based, not upon the question whether the institution belonged to this or that religious denomination, but upon the numbers who are taken care of by the charity, and only upon that. The distributions were made from time to time, based upon the numbers maintained in these institutions throughout the State. I say now, again, and I hope we have about finished this discussion, that there is no necessity whatever of our undertaking to interfere in the fundamental law with this question. It should be left where it has been left in the past, to the Legislature, and if there are any good grounds for the people feeling nervous upon this subject, they can from time to time, through their Legislature, speak their will in regard to it. But if, by our constitutional law we close up the avenues through which the needy

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can get aid from the State, although we may be conscientiously doing what we think right and necessary, I am afraid that we shall certainly by that operation do vast injury and damage to those who may depend upon the charity of the community for support, and thus incidentally injure the whole people.

Mr. BELL.—I regret exceedingly sir, that sectarianism has been drawn into this discussion. I do not think that it has any place in any action that we shall take on this subject. I think that the munificence of the State should be like the rain and the sunshine—free to all; and when objects of charity are to be sought out, it should be the last question, or, rather, it should not be a question at all, to what church or party the indigent persons belong. It has no place in this discussion, but I feel, in justice to the petitioners, and I know not who they are, and know not by whom this article was sent, I ought to say that I think my honorable friend from Onondaga [Mr. Alvord] has made too sweeping remarks in regard to these petitions; that he has not treated them as the petitioners drew them. I am not aware, sir, that the appropriation of $80,000 was taken into consideration in this petition, neither, indeed, do I think it had any place here. I think it was not properly a subject on which they should have animadverted. The object of this, if I understand it, is to show the sectarian appropriations; and I do not consider this appropriation of $80,000, divided among the respective counties in proportion to their assessed valuation, to have any thing to do with sectarianism. It is a bounty to the entire State in proportion to the assessed valuation of the counties. But they have set forth here appropriations that they consider purely sectarian, and they object to money being appropriated from the State for sectarian purposes. Now, to prove that they may have some show of reason in that matter, I will read from the appropriations that the gentleman failed to read. I will not take up the time of the Convention by reading those that he has already read. "For the St. Stephen's church in Twenty-eighth street, in the city of New York, to aid in the maintenance of schools, $1,000; for St. Gabriel's church, Twenty-seventh street, in the city of New York, for the maintenance of schools, $1,000; for the church of the Holy Innocents, for the maintenance of schools under its charge, $1,000," etc.—appropriations that are made to churches, and not to charitable institutions as such, but entirely out of the list of what is fairly considered in the common acceptation of the term "charities." Now, this is the object of the petitioners, and their statements are not so far from the truth as would seem from the sweeping remarks of the gentleman from Onondaga [Mr. Alvord]. Now, sir, let us not be governed by any sectarian bias or feeling on this subject, but lay down some general principle by which all the destitute and helpless in the State can be provided for. If abuses have arisen from appropriations by the Legislature, let us confine their appropriations to institutions that are under the general management of the State, and let those that are got up by private individuals be supported by private beneficence as far as that will go, and when that fails, from any cause whatever, then allow the local authorities to supply deficiencies. Let us do this, and we have accomplished all that a wise forethought for the relief of that class of our people can demand.

The question was put on the adoption of the substitute of Mr. Prosser, and it was declared lost.

The question recurred on the amendment of Mr. E. Brooks to amend section 1, line three, by inserting after the word "shall" the words "not be members of one religious denomination, and five of whom shall;" so that the clause would read: "A majority of whose members shall not be members of one religious denomination, and five of whom shall constitute a quorum."

The question was put on the amendment of Mr. E. Brooks, and it was declared lost.

Mr. SPENCER—If there are no further amendments in the way of perfecting that section, I propose, for the purpose of presenting the question proposed by the gentleman from Onondaga [Mr. Comstock], to move to strike out the first section. That motion will determine the sense of the committee upon the propriety of acting at all upon the article.

Mr. SILVESTER—I hope, Mr. Chairman, that this motion will not prevail. As a member of the Committee on Charities, although I have not been present during much of the discussion that has taken place upon the report, I naturally feel an interest in the report which we have presented and the article which we have submitted to the Convention. Of course, sir, I can and do find no fault that this article is submitted to the most searching and deliberate scrutiny of the Convention, before passing upon any section or part of it; but, I trust that the motion which the gentleman has just made and which is a renewal of the motion which was made by the gentleman from Onondaga [Mr. Comstock] yesterday, will not prevail. At an early stage in the history of this Convention, this subject was considered to be one of such importance that this committee was ordered by a special vote of the Convention. The arrangement of the different subjects which should be submitted for the deliberation and consideration of this body was intrusted to a select committee appointed by the President, and after very deliberate reflection that committee submitted the titles of various committees, which they thought essential for the consideration of the subjects to be presented to this Convention. Among that list of committees was not embraced one upon this subject, but the Convention by a unanimous vote considered this subject to be one of such importance that a special committee was created by a direct vote of the Convention, to consider this subject, and report an article to the Convention for its deliberation and adoption or rejection. A committee was appointed; they had many long and laborious sessions before arriving at any conclusion with respect to this subject, and they have submitted the result of their deliberations in the article and the report which are now before the Convention. Very many petitions were presented to this Convention early in its session, and during the whole course of the session, with respect to this subject. The number of petitions submitted to the Convention up to the

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present time, show that the people of the State feel an interest in the matter; that they desire that this Convention should take some action upon it, and that they consider it of sufficient importance to send petitions in regard to it to this Convention and to ask that this body shall pass upon the subject. Now, two courses seem to have been adopted in this Convention; one by the Committee on the Powers and Duties of the Legislature, and the other by this committee. The Committee on the Powers and Duties of the Legislature sought to meet the views of the petitioners by entirely cutting off all appropriations from charitable objects. That subject was presented to the Convention, and the Convention by their votes showed that they did not agree with the view taken by the Committee on the Powers and Duties of the Legislature, and that they were not willing to say, by a vote of this Convention, that no charitable object should hereafter receive any aid from the State. They did, however, modify the power of the Legislature to make such grants by providing that they could be made only by a vote of two-thirds. The Committee on Charities sought to reach the object which the various petitioners desired to have accomplished, not by abolishing, but by regulating. We were not willing to say that the great State of New York should not assist, not only the charitable institutions of the State, but of private individuals. For one, sir, as a member of the Committee on Charities, my views agree with the views of that committee. I was not willing to say, as my deliberate act, either in the committee or in the Convention, that hereafter public or private charities should not receive any aid from the State. I believe that it is not only the duty but the interest of the State to foster and to cherish, in a judicious manner, not only public but private charities. The reasons I will not occupy the time of the Convention with stating. But the committee sought merely to regulate these charities, and we have provided a plan which, as I contend, is simple, and which, if carried out, will accomplish the result desired, by providing a board to be appointed, consisting of a certain number of members to whom all applications for aid for charitable purposes are first to be submitted, and to receive their approval or disapproval. This provides against most of the objections which have been urged by those who have presented these petitions to the Convention. It provides, it seems to me, against any possible objection which can be urged against the State granting its aid to private or public charity. We provide that before this aid shall be granted the claims of the applicants shall first be submitted to a board, that board to investigate the propriety of aiding the charity; if that board reports favorably, the matter will be submitted to the Legislature, and then there is a still further check, by means of the provision which has been already adopted by this Convention, requiring a two-thirds vote of the Legislature before they can appropriate any money to charitable objects. Now, sir, I know that it has been said here, and the argument has been already urged, that this whole subject can be left to the Legislature, and that the Legislature can provide for this board and provide for regulating the whole subject of charities. It is true, sir, that they can do so, but the very fact that we have these petitions presented here, shows that although the Legislature has made a provision very similar to this in the act of 1867 providing for such a board, the people of the State desired that something should be placed in the organic law with respect to this subject some safeguard upon which they might rely, and to which they might trust. I do not believe, sir, that the people of this State desire that aid should be entirely cut off from all charities, but that they desire that the subject should be regulated in some manner. Under this plan which requires the submitting to a board all applications for charity, upon the report of which, favorable or unfavorable, will depend the granting of aid to those charities, this regulation will be provided. I trust, therefore, that this section will not be stricken out, but that members of the committee will give it their calm and deliberate reflection, because it will accomplish the result sought by the petitions that have been presented, that of regulating the granting of aid to charities; while it will not deprive any charity of that aid which it should receive, and which would be beneficial to the receivers, and at the same time beneficial to the State. In this way charity will be bestowed in the manner in which the gentleman from Jefferson [Mr. Bell] intended it should be, equal, generous and free; equally upon all without discrimination, and in a manner which is deserved, just and meritorious, and which will accomplish the greatest aid for the unfortunate, which will benefit the State in the greatest manner, while, at the same time, it will also benefit the recipients. I trust, sir, that this committee will not by its vote strike out this section.

Mr. SPENCER—I desire to say a single word in support of the motion I have made. Very many, if not most of the charitable institutions of the State, are organized in the interest of some sect or religious denomination. It will be impossible to organize a board like the one proposed by this article, without encountering a conflict between the different sects and religious denominations of the State; and it will be impossible, in the nature of things, when we consider the prejudices, and the often excited feelings growing out of religious controversies, and the efforts to acquire religious ascendency, to avoid such a conflict in relation to this board; and whenever the question of appointing such a board shall come up before the Governor or before the Senate, applicants of the several different religious denominations, either separately or in combination, will be on hand for the purpose of presenting their claims; and so hostility will be excited on the part of those who are not in the organization. Now, it seems to me that it is entirely unnecessary to embody any provision of this kind in the Constitution, and that it will serve no good purpose whatever. It is not a necessary or essential part of the framework of the government of this State, and if we are to adopt the principle of creating subordinate departments like these in the government of the State, we may go on *ad infinitum* until every single subordinate department in the administration of the

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government becomes a fundamental part of the law of the State, and the Constitution which we shall make will become as cumbersome as the statutes and acts of the Legislature of which so much complaint has been made here. It seems to me that the quickest and the best way to dispose of this matter, is to strike out this section at once and by that means dispose of the entire article so that we may proceed to some subject properly appertaining a fundamental law for the government of the State.

Mr. DEVELIN—I am in favor of the motion of the gentleman from Steuben [Mr. Spencer], not only for the reasons submitted by him and the gentleman from Onondaga [Mr. Comstock], to the committee, but also because of certain objectionable clauses in it, to which special attention, I think, has not been called. The board of commissioners contemplated by this section is authorized to visit, and inspect, and require reports from charitable institutions established by individuals. Now, if any gentleman of sufficient means, feeling an interest in his race, or from other worthy motives, establishes a charitable institution, and invests a fund, the interest of which shall accrue to its benefit, and be sufficient for its support, what right has the State to interfere by the proposed commission, or in any other manner, and to examine its operations? As well might it invade a household, subject its privacy to the public gaze and legislate as to its proprieties and conduct. If the funds be diverted from their intended object the courts possess ample power to apply and enforce a remedy. The section also declares that the board shall visit, inspect, and require reports from all institutions "except religious organizations of a sectarian character." To these words, "religious organizations of a sectarian character" there can be but one meaning. They apply in a legal sense to ecclesiastical corporations and to them only. There is no "religious organization of a sectarian character," as far as I am aware, in the State of New York, except churches. The Sisters of Charity, although composed of ladies devoted to a religious life, are not in the law "a religious organization of a sectarian character," and they would not be pronounced to be such by the courts. They form simply a charitable institution incorporated under the general law referred to by the gentleman from Onondaga [Mr. Comstock], last evening, for the incorporation of charitable, benevolent and missionary societies. They, therefore, would, by the section under discussion, be subject to visitation and inspection by this commission. Again, the ladies of the Good Shepherd, another Catholic institution organized for the purpose of relieving and bringing back to a better life females who may have fallen from virtue, are not "a religious organization of a sectarian character," but like the Sisters of Charity, though laboring, however, in a different field, are a charitable institution incorporated under the general law to which I have already referred. The Sisters of Mercy, too, another Catholic institution in New York, incorporated for the purpose of assisting women, either denizens or strangers, but unemployed in the city; of teaching them to cook, wash, iron, and perform housework generally, and of obtaining employment for them, is not "a religious organization of a sectarian character," but like the other two mentioned corporations are, a charitable institution incorporated under the same general law. This commission would thus be authorized to visit and inspect the last institution also. Other similar orders of charity, I could name, but for the argument the above will suffice. Now, as a Catholic, I strenuously object to any provision, constitutional or other, that would for a moment subject these self-sacrificing and noble ladies to such an inquisition. I oppose the creation of this board of commissioners with the view of invading the houses and homes of these retiring and delicate ladies, who, from the high est motives, have withdrawn from the outer world and are unaccustomed to its business. In many cases prurient curiosity, rather than a sense of duty, would lead the commissioners to visit and inspect these institutions, and require reports of their doings. The country had an experiment and an example of this kind a few years ago in Massachusetts. A committee was appointed there by the Legislature, or the lower house of it, called the "General Court," to visit and inspect the institutions of the Sisters of Charity. The action of that committee was disgraceful in the extreme—so much so that it won for itself the opprobious name of the "smelling committee," and its action excited the indignation of the people of Boston and of the State at large. The ladies were subjected to many indignities, and annoyed and insulted almost beyond belief. Altogether, the conduct of the members of the committee was so disgraceful that, under the storm of public indignation which burst upon it from every quarter, it was dissolved, and one member, for his offensive questions, impertinent suggestions, and attempted familiarity, was expelled from the house. I submit, therefore, that there is good reason for objecting to the appointment of any commissioners in whose power it shall be to repeat this kind of unmanly outrage upon ladies who are the pride and ornament of the largest and most influential christian church in the world. Nor is it without cause that a repetition may be apprehended, for this board or commission, if appointed, will, of course, be composed mainly of persons who differ with Catholics in their religious views. It is not improbable that some of the members would be prejudiced against the Catholic Church, its orders and its institutions. To these it will be natural to suspect their character and objects, to discredit their charitable intentions, and to believe that they are organized rather to proselyte and spread Catholicity than to aid the needy or minister to the neglected and suffering. Moved and driven forward by these suspicions, these commissioners will feel but little restraint upon the time of their visits or the mode of inspection. It is with these unpleasant circumstances in view that I ask that these gentle ladies should be, beyond possibility, protected from insults and indignities and that I express the hope that this Convention will never authorize this commission. A few words in reference to the printed circular of appropriations to Catholic institutions in 1866 and 1867, just read, and as it

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were offered in evidence in support of the proposed commission. It professes to show the appropriations to "sectarian" — thereby solecistically meaning Catholic—associations. Its special object is to prove that the Catholics are the favored and almost monopolizing recipients of the bounty of the State. The gentleman from Onondaga [Mr. Alvord] has essentially disposed of it, and clearly shown its bad faith as to the appropriations for 1866. I will, therefore, confine myself to those of 1867, and will expose its evident and intentional suppression of the truth and the studied attempt of its author to deceive and impose upon the members of this Convention. On the last page are quoted the appropriations made by the Legislature in 1867, viz.: $10,000 for St. Bridget's school, for St. Stephen's school, for St. Gabriel's school, for the Holy Innocent's school, for the school attached to St. Peter's church, for St. Mary's school, for St. Theresa's school, for the school attached to Transfiguration church, each $5,000. These appropriations appear at the close of a long paragraph on the city tax levy of 1867; but not a word, except in one instance, which will be hereafter noticed, is mentioned in this anonymous document of appropriations to Protestant establishments. Yet the compiler of it was obliged to wade through a pool of such appropriations in the opening portion of the paragraph before he reached the appropriations which I have quoted. I will cite these omitted appropriations—donations to the following institutions, viz.:

St. Francis Hospital (not Catholic),	$5,000
Ladies' Union Aid Soc. (not Catholic),	5,000
N. Y. Women's Medical College, and Hospital for Women and Children (not Catholic),	5,000
Society for the Relief of Destitute Children of Seamen (not Catholic),	5,000
Ladies' Union Relief Association for care of Indigent Soldiers and their Families (not Catholic),	5,000
House of Mercy (not Catholic),	25,000
Ladies' Home Mission (not Catholic),	25,000
Five Points House of Industry (not Catholic),	20,000
N. Y. Female Assistant Soc. (not Catholic),	1,500

In all more than $75,000, which this accurate collector of charitable statistics conceals from view.

Mr. BELL—I would inquire of the gentleman from New York [Mr. Develin] if the institutions the names of which he is now reading, are sectarian?

Mr. DEVELIN—They are sectarian in this sense: that the persons who control them are all of one religion; I do not mean all of one denomination, but they are all essentially and admittedly Protestants.

Mr. GOULD—Will the gentleman allow me to ask him a question?

Mr. DEVELIN—Certainly, sir.

Mr. GOULD—I wish to ask whether Catholics, if they choose to give the amount that is necessary, under the constitution of those societies to constitute membership, may not become members of those institutions?

Mr. DEVELIN—They may become members of the institution, but they cannot of the board of directors until a majority of the members become Catholic, and enabled to control the election of the board. Of course, then they would, in the gentleman's view, be sectarian; but in a changed, though, perhaps, his sense.

Mr. GOULD—Those institutions are not sectarian.

Mr. DEVELIN—I suppose not; because there seems to be in the minds of some gentlemen in this Convention nothing sectarian which is not Catholic.

Mr. GOULD—I want to know if Protestants can enter into the society of the Sisters of Charity, or the Sisters of Mercy?

Mr. DEVELIN—Certainly they can by becoming Catholics. [Laughter.] Permit me to say to this Convention that every Catholic parent deems it a duty which in conscience he owes to his offspring to enable them to receive not only an intellectual education but also a moral and religious training in the faith he professes. The right or wrong of this is not open for discussion here; it is a matter of belief and of conscience with every Catholic, and according to the spirit of the institutions of our country to be unimpeached, recognized and admitted in every political body. Now, in the city of New York there is a numerous Catholic population; some wealthy, others in moderate circumstances; but almost all, in one way or another, tax payers. Like other citizens they are taxed for the support of the public schools of the city; but although they thus contribute largely toward their support, very few of their children are educated in them for the reason that the pupils there do not and cannot legally be instructed in their faith. This compels them to organize schools of their own in which the necessary education may be had. Thus, in addition to the amounts they pay for the public they contribute toward the support of their own schools and maintain them.

Mr. GOULD—If the gentleman will permit me to interrupt him, I desire to say that I visited one of the public schools in New York only the other day, and there was not a child in that school that was not a Catholic.

Mr. DEVELIN—That may be; but that school must have been in the lower part of the city where the Catholics, through their political majority in that section, have elected the school officers and thus obtained control of the schools. [Laughter.] As a general fact, however, the Catholic children do not attend the public but are to be found in the Catholic schools. For instance, in the case of every school to which the appropriations I have cited were made in 1867, there was an average attendance of from seven hundred and fifty to fourteen hundred children, and, with the exception of the mentioned appropriations, the expenses of these schools were met and discharged by private contributions from the Catholics of the city. As far as my knowledge extends, and I am reasonably familiar with the matter, there is not a Catholic church in the city of New York in some part of or attached to which there is not a school filled to its utmost capacity with children of either sex. Now, when the members of this Convention reflect for a moment upon the matter and see how much Catholics contribute toward the support of the public schools, and how little they use them, and how much they themselves voluntarily expend for the education of their children, they must admit that these paltry appropriations to our schools of five thousand dollars

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sink into insignificance. There is still another appropriation made in 1867, to which I have promised to refer; it is for an institution known as the Young Men's Christian Association, which I have always understood was an institution intended to advance the interests of the Protestant religion and the views of the republican party. [Laughter.]

Mr. FOLGER—Does the gentleman think the two are identical?

Mr. DEVELIN—Well, yes, I do. I think them identical in error. [Laughter.] This donation is mentioned, but it is the only one of these numerous and large appropriations at all referred to in this anonymous communication which has been submitted, I may say, with fraudulent intent to mislead the members of this Convention. I repeat that I am in favor of the motion to strike out the first section of this report of the Committee on Charities.

Mr. SILVESTER—In any remarks which I may make upon this subject, or in any vote which I shall cast, I desire to act and speak entirely irrespective of any peculiar views which may be entertained upon this subject, either with respect to Protestantism or Roman Catholicism; and I believe that in the discussions and deliberations of the committee the different rights or views of either Protestants or Roman Catholics had nothing to do with the article which the committee have reported or the report which they have presented. They considered this subject, as I think it should be considered by this Convention, simply with respect to citizens of the State, viewed as citizens of the State, irrespective of religious views, opinions and prejudices, and with respect to what will be best for the interests of the State in connection with charities and charitable institutions, regardless of what may be the peculiar religious views of those having the control of those institutions. I, for one, sir, certainly have no objections to appropriations having been made to Roman Catholic institutions, or to their being made to them in the future. I have no objection to appropriations being made to any institutions which are charitable, and which I therefore conceive are for the interests of the State and for the benefit of the whole community, and I do not believe any member of the Committee on Charities acted, in framing this report or in asking for its adoption, with respect either to institutions being Protestant or Roman Catholic, or with respect to the direction in which charities have been bestowed. Now, the gentleman from Steuben [Mr. Spencer] says that it will be impossible to avoid controversy in the formation of this board, that denominational rivalry will enter into competion, and that there will be on that account a contest, and that important difficulties will arise. I do not view it, sir, in that light. I believe that eight gentlemen could be found whose views would be so enlarged, so comprehensive on this subject that they could act with respect to the subject of charities irrespective of any peculiar bias that their minds might have in a religious point of view. I believe, sir, that there are in the State of New York, individuals so philanthropic and so benevolent, of such enlarged minds, and of such comprehensive views in respect to the subject of charity, that eight persons could be found who could constitute a board who would act in respect to this subject simply with this view. What is the interest of the State, and what are the interests of individuals, to be promoted by this charity which is presented for our consideration? I believe they could act upon this subject irrespective of the peculiar religious views of individuals, and irrespective of the views of the persons who might compose or be influential in the charity which was presented for their consideration. I do not, therefore, think that the objection which has been urged by the gentleman from Steuben [Mr. Spencer] is of weight with respect to the constitution of that board. I believe that individuals could be found who would act with respect to the subject simply upon its own merits, irrespective of any surrounding circumstances. But another objection is urged by the gentleman from New York [Mr. Develin], and that is, that it invests the board with the power to examine into the affairs of a charity which has been founded by a private individual. Well, sir, is there any thing objectionable in that? Suppose an individual chooses to endow a charitable institution and throw it open, and to dispense its charities to the inhabitants of the State and of the world. That institution is still under the laws of the State of New York, and is it not proper that a board which has been created by the State should have a right to examine into the affairs of that institution and see how it is conducted? But, sir, suppose a private individual shall endow a charitable institution, and shall leave funds sufficient for carrying on its operations; that individual dies, and the funds pass into the hands of trustees to administer that charity; is it not right that there should reside in this board the power to investigate and determine whether the objects of the donor have been carried out, and whether the trustees are properly administering the trust of the institution?

Mr. DEVELIN—The courts have that power now.

Mr. SILVESTER—Certainly; I am aware of that. What objection then, is there to granting that power to this board if the courts of the State of New York have the right to investigate and see whether private charities are carried out in accordance with the will of the donor? Why is it improper to place this power also in the hands of a board whose duty it shall be to investigate the charities of the State, and one of whose duties it shall be to see that the objects of a donor are faithfully carried out? The gentleman from New York [Mr. Develin] has intimated that the clause in the first section which excludes the right of investigation and visitation of religious organizations of a sectarian character would not exempt such institutions as the Sisters of Mercy and Sisters of Charity, and other societies and benevolent associations of the same character, from such investigations. I, sir, as a member of the committee, know that it was the intention of the majority of the committee in placing this exceptional clause in the section that it should have the operation of exempting from the visitation of this board on charities those very organizations to

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which he refers; and I should object as much as any gentleman—I, as an Episcopalian, would object to the visitation by this committee of the organization in my own church of the Sisters of Mercy and others of a kindred character, and I certainly considered, and I think the majority of the committee considered, that the exceptional clause had the effect—it certainly was intended to have the effect—to except from this visitation such organizations as the Sisters of Charity, Sisters of Mercy, and other organizations of a kindred character. I think, therefore, there is no force in the objection which was urged by the gentleman from New York in respect to that clause in the section. But if there is, it can be so amended in its scope and meaning, and language, as to attain these objects, and to exclude from the visitations of that board organizations of the character to which I have referred.

Mr. LEE—I do not rise to make a speech. I did not design to say a word upon this subject, and I shall confine myself now to a very few remarks. I hope that this section will not be stricken out. I shall confine myself to that. While I believe that the State owes it to itself to provide suitably for its unfortunate poor, embracing the idiotic, the insane, the blind, the deaf and dumb, and disabled seamen, soldiers, and their orphan children, I think, sir, that the State might well confine itself, as a State, in providing for the care and support of the classes I have named. And while, sir, there are a great variety of other worthy classes of unfortunate poor, I think that the counties or the Legislature in its wisdom should provide a mode by which means should be raised by those who are familiar with the needs of these several classes in the several localities throughout the State. To my mind the gentleman from New York [Mr. Develin] has furnished some of the best arguments in the remarks he has made why some action should be taken by this Convention in relation to this subject. He says that when a member of the Legislature last year, because the Legislature had very generously made numerous liberal grants to the Catholic schools of the city of New York, though the State has made ample provision for the education of all the children of that city (the Catholics having, in their wisdom, seen fit to refuse the boon, and come to the Legislature to ask provision for their sectarian schools), he, as a Catholic, was willing to vote for a donation to a Protestant institution. This sort of legislation is based on the principle of "You tickle me, and I'll tickle you." In the latter part of the session of the Legislature, in haste, and without due consideration, designing men combine together, each to promote his own local interest, and thus deplete the treasury of the State. Thus it is that a very large number of the people of the State are called upon, in the payment of taxes, to support religious institutions, who feel no particular interest or feeling on the question of Catholicity or Protestantism at all. Now, I take it that there is a very large class of people in the city of New York who are not looking primarily or mainly to sustain the building up and support of Catholics as such, or Protestants as such. There is a large class who feel that the particular work of building up sectarian or denominational institutions appertains to those who entertain denominational beliefs. I hold, sir, that the people of the State have a right to say, by constitutional provision that a bar should be interposed in some way by which the action of the Legislature, in the last hours of the session, may be moderated, or at least that they shall be curtailed, if you please, in the exercise of the right to voting away indiscriminately the money of the people. I hope, sir, the motion to strike out this section will not be sustained. And, sir, while this section reported by the committee does not fully meet my views, I think it an improvement upon the provisions existing in the present Constitution.

Mr. M. I. TOWNSEND—I presume that there is no difference of opinion among members of this Convention in regard to the simple question of charity; so that any vote that we may give upon this subject ought not to commit us for or against charity. I suppose it will be as readily conceded that a majority of this Convention are Protestants, strong Protestants; and I trust that any vote which the members of this Convention may give upon this subject will not be supposed to commit him to either the Catholic or the Protestant interest in mere religious matters. I think that another fact will not be disputed in this Convention, and this is that our Legislature has occasionally made unadvised appropriations, so that any vote that we may give on this subject should not commit us to the one side or the other of that question. So far as the question now immediately before us is concerned, it is whether in the present state of the Constitution and laws of this State, we actually need to create the board that is proposed to be created in the first section of the proposed article. Now, sir, I do not believe that we have any need of adopting a constitutional provision creating such a board. It may have been wise for the Legislature to have created the board which it has created. It may be found equally wise for the Legislature to repeal the law creating that board, and, as the Constitution now stands, and as it will stand if we do not adopt this provision, if the Legislature shall find that the creation of that board works badly, they will possess the power to strike the board out of existence by future legislation. But if we incorporate this provision in the Constitution, the board must stand until the Constitution is changed, however much of mischief may be found to result from the workings of it If it works badly, the system must stand until the Constitution itself shall be changed. Now, sir, for myself, I may perhaps be considered irreverent, when I say that I have a perfect distrust of all such boards, and especially boards created by constitutional provision. I think it would be better, if it were necessary, to endow eight philosophers and philanthropists at the expense of the State, that we should provide directly for the payment of their salaries, and not give them any power whatever. I think that incalculable mischief is likely to grow out of committing this duty to the hands of these men. It is suggested that it is very important that there should be the power of visitation. Sir, we do not need this

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section to enable the Legislature to provide for the visitation of institutions supposed to be working mischief, institutions supposed to be working immorality, institutions supposed to imprison within walls those who wish to be free. An abundance of power exists in your Legislature under other provisions of your Constitution, and will remain, unless our philosophers and philanthropists shall emasculate legislative power by provisions that ignorance may foist into the Constitution, in utter ignorance of the evils which they are likely to produce. If we do not tie the hands of the State of New York the Legislature will have the power, if an institution is supposed to be working immorality or working injustice, to make any proper visitation and inquire into the facts. There is no difficulty in visiting institutions under the Constitution as it now stands. But it is proposed that an inquisitorial body shall be established by the Constitution, authorized to go at all times spying into all the institutions such as are embraced in the scope of the first section of this article. If we needed a constitutional provision giving us power to look out wrong and to rescue the oppressed, there might be reason for this provision. But there is no reason for it in the world. I make this remark for the reason that there has been an evident attempt out of doors to swerve this Convention out of its propriety by appealing to the Protestant prejudices of the majority of this Convention. Now, sir, I have as many Protestant prejudices as most men, but I do not believe that, officially or privately, those Protestant prejudices should drive me to work a folly either in my official action here or elsewhere. If our Catholic friends have had too much help from the State, we certainly have inserted in the proposed Constitution a provision that will protect the State against such action in the future, because I trust, sir, that the time is not likely to come during the existence of any Constitution that we shall make when it will not be found that one-third of the members who shall be elected to either branch of your legislative body will be as staunch Protestants as the majority of this Convention is to-day. And so long as that state of facts exists there is no danger that those really representing a large majority of the people of the State at the present time will not be protected in their religion and in their property. And it was for this reason that I arose and it is for this reason that I say that Protestantism does not require that we should foist this monstrosity upon the Constitution of this State.

Mr. DUGANNE—The question, as I understand it, is between the adoption of the substitute offered by the gentleman from Erie [Mr. Prosser] and the first section of the article reported by the Committee on Charities.

Mr. M. I. TOWNSEND—The question is on the motion to strike out the first section.

Mr. DUGANNE—Then I will reserve my remarks for the present.

Mr. DALY—I regret that I have not been present pending this debate, because in the very few observations which I propose to offer, I may possibly repeat what some other gentleman has said. I can only justify my doing so by being exceedingly brief in my remarks. This provision as I understand it, embraced in the first and third sections, proposes to exclude from all State donations any institution that is religious or sectarian in its character.

Mr. LEE—I think there was a motion to strike that out, but I may be mistaken.

Mr. M. I. TOWNSEND—It has not yet been made. It was proposed to be made.

Mr. DALY—I understand that it has not been stricken out. I have very little to say in respect to that provision. I admit that there is a principle in holding that the funds of the State raised for general purposes shall not be applied to charitable institutions managed by private individuals, and if the Convention is disposed to go to the length of that general principle, if they believe it wise or expedient to do so, then whatever opinion I may entertain of it as to its policy or utility, I certainly can have none to its general justice as it makes no distinction, but confines the funds raised by taxes of the State donated for purposes of charity solely to State institutions. But if the State is to continue as it has done from the organization of the government, to bestow donations upon other institutions, which relieve the State of a trust otherwise imposed upon it, either to educate its people or to relieve them when from want or destitution they become a charge upon the community, or in other words to fulfill the obligations of humanity toward them, I say, then, there is no justice in excluding from the operations of its bounty any institution which comes under the denomination of religious. No man in the present age is bold enough, I apprehend, to say that, any education which is bestowed upon our youth should be wanting in the religious element. If there is any thing in our civilization which tends to elevate us, and distinguish us from the ages that have preceded us, it is the fact of the large amount of religious education instilled in our youth, and the beneficial influence of it during the after stages of life. The difficulty, however, as to what that religious education shall be, involves the difficulty of this difference in the religious creeds, and the impossibility of prescribing any one form of religious instruction, or the difficulty of excluding it altogether. What, in the language of the section, is understood as a religious institution? If, in the government of a school, or in the management of any institution, it forms a part of its discipline that a prayer should be offered to the great Creator of the Universe for the benefits He has bestowed, or if any thing else is prescribed which indicates a religious sentiment in its management, that institution is more or less religious in its character. And unless a very nice distinction be drawn between what is purely moral instruction, and what is purely religious, a distinction which it is difficult practically to carry out, it would be impossible to determine what would or would not be religious. The difficulty, therefore, involved in this provision is, that the board will be called upon to determine what is a religious institution; and it is sought to get over that difficulty by adding to the word "religious" the words "or sectarian." What is a sectarian institution? Let us take the oldest form of religion amongst us — that of the primitive peo-

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ple who preceded Christianity in the establishment of the monotheistic worship of one God —the Jews. The Jew will say that he is no sectarian, because his was the first religion that established the worship of a single God, and that, as the etymology of the word sectarian denotes, which is, "cut off, "or" separated from," all the rest have separated from and are sectarians, while he is of the original faith, that the whole body of Christians are "breakers off" from the primitive form of worship which his ancestors established. If you take the Christian faith, then the oldest existing form of that faith is the one of which I am a member—the Roman Catholic; and I may say with regard to the subsequent faiths called Christian, that they are sectarian, because they are "breakers off" and "seceders," that the term "sect" applies to them and does not apply to the Roman Catholic faith, which represents the prior organization of the Christian church. In offering these remarks I do not desire to be invidious, but I simply offer them to show that difficulties will arise in the interpretation of a section of this kind, in determining what institutions are religious and what are sectarian. The result will be this, that it will put it in the power of the board of trustees to determine arbitrarily a question which it is impossible to define, and which can have no practical operation or effect, except as the enforcement of their will. It is a matter of no consequence to the State, in the bestowal of its bounty, whether children are educated to be Catholics, Baptists, Presbyterians, Methodists or otherwise, if these denominations choose to take the matter in charge, and give the children of their denomination a good education, though it may be in accordance with the denominational religious views. It should not be the desire of any one denomination to bring about a state of things by which children of another sect shall be required in their education to conform to the doctrines of a different faith from that in which their parents wish them to be brought up. The great principle of toleration is the one we have professed to act upon in this country. It is carried out in the national Constitution of the United States, and in all public matters great delicacy must be exercised upon the subject of religious belief. It is one of the features that distinguishes us from other nations, that our government publicly recognizes one of the infirmities of human nature; one that we are constantly called upon in society to encounter, the prejudices of those belonging to particular sects, and the very natural feeling which results from the conviction of the truth of the faith to which they belong, that is, that all mankind should think as they do. I have only one more remark to make, and that is in respect to the second section of the proposed act. I understand that my distinguished friend from Onondaga [Mr. Comstock] who certainly is as competent to speak upon legal questions involved in that section, as any other gentleman in this body, has already expressed his view upon the subject. I did not have the pleasure of hearing his remarks, and therefore, I do not propose to discuss the subject, but to pass it by with one or two observations. It proposes to organize in the fundamental law of the State, the law of charitable uses, devises and bequests. I have read the section carefully through. It has been my vocation for many years to pass upon the interpretation of language embodied in provisions of this nature, in our laws, and I speak of the language here employed with something of the same confidence which a mechanic feels in respect to the use of his tools. I say, in the first place, that this provision is one which belongs legitimately to the Legislature, and that if I were sitting as a legislator, and were called to consider this section and to adopt it as the law, I should not, though it might be changed the following year, be willing to vote for it. I should have so much doubt and uncertainty, in regard to the practical operation of the provision, that I should not be willing to assent to its enactment for a single year. If that be the effect upon my mind in reading this provision, and I have read it carefully over several times, what view must I take when it is delibrately proposed in the Convention to enact it in the fundamental law of the State, and make it a permanent and unchangeable provision for a period of twenty years—that whatever be its operation or effect, to put it out of the power of the Legislature to make any change or alteration in it. I will not go over this provision. Gentlemen can read the section for themselves, and they will find that the power given to this board to control charitable uses is of a most extraordinary nature, leaving it to the discretion of the board to determine whether an individual should dispose of his property in the way in which he wishes to do or not. But apart from all other considerations of its practical effect, it involves in addition to that, what is also objectionable under our form of government, the extraordinary powers given to a board in the matter involving the property of individuals which may embrace millions of dollars. In respect to this provision, I consider it highly objectionable, and in respect to the other proposition, which creates a distinction in the bestowal of the bounty of the State, I cannot recognise any institution as well organized or carried on in which there is not something connected with the worship of Almighty God, for the benefit of those who are instructed in, or who are kept in it for any purpose. And I cannot therefore but regard a prohibitory provision of this kind as exceedingly unwise in its conception, and as one that is impracticable, or else unjust or arbitrary in its operation.

The question was then put on the motion to strike out the first section, and it was declared carried.

The CHAIRMAN—The Secretary will proceed to read the second section.

Mr. DEVELIN—After the expression of the opinion of the Convention which has just been had on the subject, I think I am justified in moving that the committee do now rise and report progress, and ask leave to sit again. I make the motion with the intention of opposing the granting of leave when the matter shall come up in Convention.

The question was put on the motion of Mr. Develin, and it was declared carried.

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Whereupon the committee rose, and the President *pro tem.* Mr. ALVORD, assumed the chair in Convention.

Mr. OPDYKE, from the Committee of the Whole, reported that the committee had had under considaration the report of the Committee on Charity and Charitable institutions; had made some progress therein, but not having gone through therewith had instructed their chairman to report that fact to the Convention, and asked leave to sit again.

The PRESIDENT *pro tem.* announced the pending question to be on granting leave.

Mr. COMSTOCK—For the reasons which I had the honor of stating yesterday, and which have been much better stated by other gentlemen, I hope the leave requested will be refused.

Mr. E. BROOKS—I certainly shall be content to abide by whatever may be the judgement of the Convention in the disposition of this important subject. My own views have been so fully expressed in Committee of the Whole that I do not propose to repeat them now that we are in Convention. I think that what has been said by those who opposed the report, demonstrates at least this fact, and especially upon the admission of the gentleman from New York [Mr. Develin], that a large amount of money is appropriated in consequence of what is called mutual understandings by gentlemen representing certain institutions and those favoring others. He has admitted here directly that he voted $5,000 for what he regards as a sectarian institution because gentlemen on the other side had voted many thousand dollars in support of institutions in which he felt a religious personal interest. Now sir, the effect of a board of charites is to prevent just such malign and injudicious legislation as this. The intent and purpose is to save the public money; and the effect will be, if this section is adopted, to save large amounts of the public money. Sir, it has been said (and upon that I wish to make a single remark), that the language of the first section of the article which the Committee of the Whole have voted down, allowed visitations to religious institutions, such as the Sisters of Charity and those of a kindred character. Sir, in my judgment, the language of this section is incapable of any such interpretation. The subject was before the committee where it was discussed at great length and considered directly with reference to this view: and it was the unanimous judgment of the committee that it was not in the power of the board of charities to visit religious institutions like those of the Sisters of Mercy or any of a kindred character. I will not detain the Convention further. All I ask in the discharge of my duty here, and I trust there is a quorum present that there may be no delay of business, is that the yeas and nays may be taken upon the report of the Committee of the Whole, made to the Convention by its chairman [Mr. Opdyke].

Mr. VAN COTT—May I ask the gentleman from Richmond [Mr. E. Brooks] a question? I understood him to say in reference to the construction of this section, that it was intention of the committee that the Sisters of Charity should not be subject to visitation. I would ask him if it was also the intention of the committee that the Legislature should be prohibited from granting aid to the Sistors of Charity. I call his attention to the identity of the language of the two sections. The first section excepts from visitation religious organizations of a sectarian character. The third section excepts from the bounty of the State institutions which are religious or sectarian in their character. I suppose that these terms are to receive the same construction in each sentence. If you exclude one from visitation you exclude the other from legislative aid. If you include the Sisters of Charity in the provision for visitation you include them in the legislative grant. I wish to know what construction the committee give to the terms used in the two sections,

Mr. E. BROOKS—If I had been fortunate enough during my remarks yesterday to have had the attention of the gentleman from Kings [Mr. Van Cott] he would have heard me say more than once, that it was my intention to move to strike out from the third section, the ninth, tenth and eleventh lines, because they were entirely inconsistent with the views I had presented as chairman of the committee, and because, as I stated yesterday, these several lines were inserted under an impression made upon the committee and by the memorials to which such reference has been made to-day. Therefore, if the Committee of the Whole had thought proper to have gone on with this article to its conclusion, undoubtedly it would have been the sense of the majority to have these lines stricken out.

Mr. VAN COTT—Then I understand the gentleman [Mr. E. Brooks] that he is in favor of excluding these sectarian institutions from the power of visitation, and that he is in favor of granting them public moneys; in other words, those institutions which have no sectarian character and which do not specially need visitation shall be subject to visitation, and those institutions which are sectarian, to which public grants are made, and which specially require to be carefully looked after, shall not be visited. I understand that to be the scheme of the committee as the gentleman interprets it.

Mr. E. BROOKS—In regard to my own views on this subject, I have said again and again that, as a member of this Convention and as a citizen, I would never discriminate between those of one religious denomination or another; and upon this matter of visitation I will say that if I belonged to any sect, and was interested in any charity whatever in the State, I would not object to its visitation by a committee of the Legislature—nay, I would invite it and court it, and lay the institution as open as the day to public and private scrutiny, believing that I should be doing a private and public benefit by an act of that character. The committee were careful in their judgment that they would pay a proper respect to those who held different opinions, by declaring that institutions religious in their character and organization, like the Sisters of Charity, should not be subject to this visitation.

Mr. FOLGER—The gentleman from Richmond [Mr. E. Brooks] used a phrase, in substance this:

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that this article was proposed to prevent a reckless and wasteful expenditure of the public moneys by the Legislature. I take it, he has not used a phrase so defamatory of the members of the last Legislature without having the facts at hand to justify it. I desire the gentleman to point out in the charity bill of last year an instance of a reckless and wasteful appropriation of money.

Mr. E. BROOKS—In reply to the gentleman from Ontario [Mr. Folger], I think I can refer to the statement of the gentleman from New York [Mr. Develin] in illustration. He stated that he voted to give $5,000 to the Young Men's Christian association in the city of New York, because large appropriations of money had been made to institutions where the Catholic faith was professed. My friend from Ontario has been too long a member of the Legislature, and has had too much experience in it, not to know that these combinations exist at every session, in which the understanding is that if a member will vote to make an appropriation for one locality an appropriation shall be made for his locality. Sir, the laws of 1857, in the very diversity of the appropriations, and the laws of 1866 and 1867, and the journals containing the debates of the proceedings prove what I have said to be the fact. Sir, human nature will have to be something less than human nature unless this is true. I think this is the experience of every body, that appropriations are made in one locality, under a mutual understanding that the representative of that locality shall vote for a similar appropriation elsewhere.

Mr. FOLGER—The gentleman answers me entirely in generalities. I requested him to put his finger on any item in the charity bill of last year which was a reckless and wasteful appropriation of the public moneys. By a wasteful appropriation I understand money given for no good purpose—money ostensibly appropriated for a charitable purpose which has been donated in fact to a purpose not beneficent, or has been given in large excess of the needs of a beneficent purpose. If the gentleman knows of such an item in the charity bill of last year, he will do me a favor if he will point it out.

Mr. E. BROOKS—There is an entire difference between the gentleman from Ontario [Mr. Folger] and myself as to what is a proper appropriation. I grant that this money may be very properly expended as to charity. But I say that it is not a just appropriation in reference to the taxation of the State. This is the point I make. Sir, there is in my own county an interesting institution, and one deserving perhaps of public aid. It is intended to benefit a certain class of children, and it is precisely one of those claims which I think ought to be supported from private rather than public charity. The argument of the gentleman who represented the county of Richmond was that, having made appropriations for other parts of the State for children, it was but fair that the county of Richmond should receive its proportion of the public money for their institution. The argument was irresistible.

Mr. FOLGER—Then the gentleman concedes that he cannot point to any item in the charity bill of last year where the money was wastefully expended?

Mr. E. BROOKS—I do not concede any such thing.

Mr. FOLGER—Then he will gratify me by pointing it out.

Mr COMSTOCK—I rise to a point of order, that the discussion is not germane to the pending question.

The PRESIDENT *pro tem.*—The point of order is well taken.

Mr. DUGANNE—In the Committee of the Whole I felt called upon to support the report of the Committee on Charities as presented. At that time I was not aware that there was any understanding that the report was not to be a genuine report but merely a Pickwickian one. I did not suppose that there was any tacit understanding by the committee that the report should be amended by the chairman or by any other member of the Convention after it was submitted. I looked upon it as having been submitted in good faith. I supposed that the clause prohibiting donations to organizations for sectarian purposes was inserted in good faith, and that it was to be supported by the chairman and the other members of the committee. Therefore, in good faith, I announced my determination to sustain the report. It seems, however, that I have been mistaken; that there was an ulterior motive in the minds of the members of the committee in the presentation of this report. I am at a loss to understand the attitude of the gentleman from Richmond [Mr. E. Brooks], who, while admitting and deprecating the combinations in the Legislature by which one sectarian denomination is supported in order that another—

Mr. HALE—I rise to a point of order. The question before the Convention is simply upon the granting leave to the Committee of the Whole to sit again in the consideration of the report. The gentleman [Mr. Duganne] has, so far, been discussing the merits of the report.

The PRESIDENT *pro tem.*—The Chair decides that the point of order is well taken. The gentleman will confine himself to the proposition.

Mr. DUGANNE—I was endeavoring to explain the reasons which would govern me in my vote, and I found it necessary, in order to do this, to recur to what had already transpired. I said I was at a loss to understand why the gentleman from Richmond [Mr. E. Brooks] should deprecate these circumstances, and at the same time announce his intention to move to strike out from the report—

The PRESIDENT *pro tem.*—The attention of the gentleman has been called to the fact that he is not speaking to the pending question. He will please proceed in order.

Mr. DUGANNE—Very well, Mr. President. I am opposed to granting leave to sit again, and I rose to explain the vote I should give on that question. I do that, because in Committee of the Whole I defended the report of the Committee on Charities. I have changed my views on hearing a determination, announced by the chairman of the committee [Mr. E. Brooks], to change the report from what it was when presented.

A sufficient number seconding the call of Mr.

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E. Brooks for the ayes and noes, they were ordered.

The SECRETARY then proceeded with the call of the roll on granting leave, pending which it became apparent that there was no quorum present.

Mr. E. BROOKS—I ask the unanimous consent of the Convention to make a motion which will relieve the Convention of its dilemma. I ask consent to make a motion that the report be laid on the table.

There being no objection, the question was put on the motion of Mr. E. Brooks, and it was declared carried.

A DELEGATE—There was no quorum voting.

Mr. E. BROOKS—It is not necessary to raise that question.

Mr. DEVELIN—Does the motion of the gentleman from Richmond [Mr. E. Brooks] carry the question on granting leave to sit again with it?

The PRESIDENT *pro tem.*—It carries the whole matter with it.

The PRESIDENT resumed the chair and announced the next business in order, the report of the Committee on the Powers and Duties of the Legislature as amended in Committee of the Whole, being printed document No. 136.

Mr. WALES—I think we have gone nearly through with that article in Committee of the Whole.

The PRESIDENT—The Chair is not aware that that report has ever been considered in Convention.

The SECRETARY proceeded to read the first section, as follows:

SEC. 1. The Governor may call special sessions of the Legislature by proclamation, in which shall be stated the particular object or objects for which they are so called, and no business shall be transacted at any such special session, except such as shall be stated in the proclamation calling the same.

There being no amendment offered to the section, the SECRETARY read the second section as follows:

SEC. 2. For any speech or debate, in either houses of the Legislature, the members shall not be questioned in any other place.

Mr. LAPHAM—I move to strike out the word "houses" in the first line, and insert the word "house."

There being no objection the amendment was made.

There being no further amendment offered to the section the SECRETARY read the third section as follows:

SEC. 3. Any bill may originate in either house of the Legislature, and all bills passed by one house may be amended by the other.

Mr. DEVELIN—I move to amend the section by inserting after the word "Legislature" in the second line, the words "except appropriation bills, which shall originate in the House of Assembly."

Mr. ALVORD—I would suggest to the gentleman from New York [Mr. Develin] that he had better change the language of his amendment a little by making it "all bills appropriating the public moneys," etc.

Mr. DEVELIN — I accept the amendment. The reason I offer the amendment is that it accords with the usage of all popular governments which requires that all appropriation bills shall originate in the house which immediately represents the people. The usage in Congress, in the Legislature, and in all popular governments, is that such bills shall originate with the body that comes directly from the people—the members of which were elected at the election immediately preceding the session of the Legislature.

The question was put on the amendment of Mr. Develin, and, on a division, it was declared lost by a vote of 26 ayes, the noes not being counted.

Mr. SEAVER—I move to amend by striking out the words "all bills," in the second line, and inserting in lieu thereof the words "any bill."

The question was put on the adoption of the amendment of Mr. Seaver, and it was declared carried.

There being no further amendment offered to the section, the SECRETARY read the fourth section as follows:

SEC. 4. The enacting clause of all bills shall be, "The People of the State of New York, represented in Senate and Assembly, do enact as follows," and no law shall be enacted except by bill.

There being no amendment offered to the section, the SECRETARY read the fifth section as follows:

SEC. 5. No bill shall be passed unless by the assent of a majority of all the members elected to each branch of the Legislature; and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the journal.

There being no amendment offered to the section, the SECRETARY read the sixth section as follows:

SEC. 6. No law shall embrace more than one subject, and the matters necessarily connected therewith, which subject shall be expressed in its title. But if any subject shall be embraced in an act which shall not be expressed in its title, such act shall be void only as to so much thereof as shall not be expressed in the title.

Mr. ROBERTSON—I think there is a typographical error. I suppose the word "the" at the end of the first line should be omitted. The words "the matters" would imply that there were some specific matters well known, connected with every subject.

There being no objection, the amendment suggested by Mr. Robertson was ordered.

Mr. LAPHAM—I move to strike out the words "and matters necessarily connected therewith," so that it will read "no law shall embrace more than one subject, which subject shall be embraced in its title," etc.

The question was put on the adoption of the amendment of Mr. Lapham, and it was declared carried.

There being no further amendment offered to the sixth section, the SECRETARY read the seventh section as follows:

SEC 7. No law shall be revised, altered or amended by reference to its title only, but the

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act revised, or the section or sections thereof altered or amended, shall be re-enacted and published at length, and the act so revised, or the part or parts thereof so altered or amended, shall be repealed.

Mr. FOLGER—I move to strike out the whole of line five, and so much of line four as begins at the word "length." I do not see the neccsity of repealing the former act. Whatever in the former act is inconsistent with the new act, amendatory or altering the old, of course falls. Whatever is not inconsistent, of course, ought to stand.

The question was put on the amendment offered by Mr. Folger, and it was declared carried.

Mr. ROBERTSON—I would suggest the insertion of the word "as" in the third line. As it reads now it would imply that the section or sections should be republished exactly as originally passed. I wish it to read, "the section or sections thereof, as altered or amended, etc."

The question was put on the amendment offered by Mr. Robertson, and it was declared carried.

No further amendment being offered, the SECRETARY then proceeded to read section 8, as follows:

"On the day of its final adjournment, the Legislature shall adjourn at twelve o'clock, at noon.

Mr. ALVORD—I move to strike out this section.

The question was put on the motion of Mr. Alvord to strike out, and it was declared lost.

Mr. FOLGER—I move to reconsider the vote by which the motion offered by the gentleman from Onondaga [Mr. Alvord] was lost.

Objection was made to the immediate consideration of the motion.

The PRESIDENT—Objection being made, the motion lies on the table, under the rule.

The SECRETARY then proceeded to read section 9, as follows:

"The Legislature shall not audit, or allow any private claim or account against the State, or pass any special law in relation thereto, but may appropriate money to pay such claims as shall have been audited and allowed according to law."

Mr. FOLGER—Without making a motion, I would like to ask some one who has this article in charge what the force and effect will be of the words "or pass any special law in relation thereto." Very frequently it is necessary to pass laws relative to claims for the purpose of conferring jurisdiction upon some board to hear them. It is known to every gentleman in the Convention that the State is not capable of being sued; and it has upon its own motion to create a tribunal before claims against it can be heard. Any citizen of the State may have a claim against the State, and I do not see where he is to find any tribunal, unless there is some law passed to give him a tribunal.

SEVERAL DELEGATES—In the next section.

Mr. FOLGER—This section denies the special law; but if it is the construction of the language that general laws are to be passed to cover every conceivable claim, I have nothing more to say

No amendment being offered, the SECRETARY then proceeded to read section 10 as follows:

SEC. 10. There shall be a court of claims, to consist of three judges, to be appointed on the nomination of the Governor, by and with the advice and consent of the Senate, in which court shall be adjudicated all such claims against the State as the Legislature shall from time to time, by general laws direct. Such claims shall be tried without a jury, but the facts found by the court on the proofs shall be stated in each adjudication. In all cases where such claims shall amount to five hundred dollars or more, and be for the value or damages to real estate, the judges of said court shall, and in all other cases may, view the property in question, and in deciding thereon shall consider their own estimate of such value or damages in connection with the evidence in the case. In all other respects such court shall be governed in its adjudications by the legal rules which have heretofore existed between the State and its citizens, according to the course and practice of the common law as modified by the statutes of this State. The statute of limitations shall prevail in favor of the State the same as in favor of individuals. The jurisdiction of such court shall be exclusive, and its decisions may be reviewed on the law on appeal to the court of appeals. The judges of said court shall hold their offices for the term of five years, unless sooner removed according to law, and shall severally receive at stated times for their services a compensation to be established by law, which shall not be increased or diminished during their continuance in office.

Mr. ALVORD—There is an inconsistency in one of the provisions of this section, with the work which we have already done in this Convention. If gentlemen will turn to document No. 153, they will find that in that document, in section 4, the statute of limitation which was against parties, is for two years; but here, by a general and broad enactment they propose to have a statute of limitation extended to six years. I move sir, an amendment, to make this conform to what has already been passed upon by the Convention. We have passed in the canal report the following provision:

No claim for damages growing out of the maintenance of the canals and feeders connected therewith, shall be heard or allowed, except the same shall be made within two years after the claim shall arise, unless the party claimant shall be under legal disability, and in such case the claim shall be made within two years after the removal of such disability.

The PRESIDENT—Will the gentleman from Onondaga [Mr. Alvord], please reduce his amendment to writing and forward it to the Secretary.

Mr. ALVORD—The idea that struck me was, that this being general in its terms did not cover this special case. I may be mistaken. "Except as otherwise provided by this Constitution," is suggested. I have no objection to that.

The PRESIDENT—At what point will the gentleman insert those words?

Mr. ALVORD—After the word "individuals" in the eighteenth line,

Mr. ROBERTSON—I propose an amendment

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which I think will cover the same ground and will be more explicit. It says "the statute of limitation." I would propose to change that language, so as to read "the same statutes of limitation shall prevail, in favor of the State as in favor of individuals." There is no one statute of limitation. Statutes of limitation are of various duration; and it should be "the same statutes of limitation shall prevail in favor of the State as in favor of individuals" I offer that as an amendment. I have another suggestion to make, which perhaps is better yet. "The law of limitation shall prevail in favor of the State in the same cases as in favor of individuals." Will that meet the view of the gentleman from Kings [Mr. Van Cott]? I offer this as a substitute for the amendment offered by the gentleman from Onondaga [Mr. Alvord].

Mr. MURPHY—I do not think that meets the objection raised by the gentleman from Onondaga [Mr. Alvord]. This would have reference to statutes.

Mr. ROBERTSON—It is the law, and the Constitution is the highest law of the State. If there is any doubt about it I will put in, "the law of limitation either by force of the Constitution or of statutes." I am only anxious to make it explicit and cover all the cases.

Mr. MURPHY—I should prefer the words before stated.

Mr. ALVORD—I have very grave doubts whether the proposition of my friend from New York [Mr. Robertson] will meet the case which I have undertaken to meet by my amendment. We have put in an explicit direction here that so far as the Legislature is concerned they shall not recognize any claim growing out of damages upon the canals after two years shall elapse; and it strikes me that unless that provision which I have suggested is put in, there will be great doubts whether this sweeping general clause will not do away with that particular enactment of the Constitution. I trust, therefore, that the proposition which I have made will not be considered as put out of the way by the substitute of the gentleman from New York [Mr. Robertson].

Mr. RUMSEY—I have the impression that the gentleman from Onondaga [Mr. Alvord] is entirely mistaken in his view of this section. The statute of limitation, which is prescribed in the section he referred to of two years, will necessarily have full force and effect, and this section will apply only to such other claims against the State as are not included in the section referred to by him. It seems to me there can be no doubt about that being a fair construction, and that this provision as it stands now is entirely right.

Mr. ALVORD—I hope that when we make this Constitution and it shall have received, as I trust it will, the approbation of the people, there will be no doubt in regard to its construction. It is just as well now to determine a question of that kind by plain, explicit, unequivocal language, as it is to leave it in any sort of doubt.

Mr. VAN COTT—There are two limitations; the one, the limitation in the Constitution; the other, the limitation by statute. This provision simply is, that the statute of limitation shall be available to the State as it is to the people. Of course the constitutional limitation will also be available. There is no conflict whatever—no incongruity about it.

Mr. POND—I am opposed to any amendment that shall provide a statute of limitation in favor of the State—a shorter limitation than what applies between individuals; and I am opposed to the limitation in the section referred to by the gentleman from Onondaga [Mr. Alvord], that the State may take a man's land—if it applies to such a case, and I think it does—who does not reside in the State, and may not know it for four years, or five years, and cut off his right for damages for that taking of his property, unless he makes the claim in two years. I say it is a monstrous proposition, that the State shall avail itself of the two years' limitation against its citizens while the citizen, as against another, has six years to enforce his claim. There is no reason for limiting the claim made by a citizen against the State to two years—none whatever that does not apply as against every citizen of the State.

Mr. ALVORD—Will the gentleman permit me to ask him a question? Does he not know that now the statute of limitations, so far as the State is concerned, is one year, and that this enlarges it.

Mr. POND—No, sir; I do not know any such thing.

Mr. ALVORD—If the gentleman will read the laws he will find it so.

Mr. POND—There is no limitation on the power of the Legislature to entertain a claim in favor of an individual against the State; but this Constitution takes all power away from the Legislature and confers it upon no other tribunal; and the amount of it is, there will be an iron constitutional rule adopted, cutting off all claims against the State that run two years. I say the proposition is monstrous upon the face of it.

Mr. ALVORD—I rise to a point of order. My point of order is this, sir—that this question, so far as it regards this two years' limitation, has already been passed by this Convention, and is not now up for discussion.

The PRESIDENT—The Chair is not aware of that fact.

Mr. ALVORD—The two years' limitation is in the canal article, which has been passed by the Convention.

Mr. POND—If the gentleman is satisfied with that, why does he make the motion to amend this?

The PRESIDENT—Does the gentleman mean in another article—a distinct article?

Mr. ALVORD—Yes, sir; a distinct article.

The PRESIDENT—The Chair does not think the point of order well taken.

Mr. ALVORD—My point of order is that the gentleman is now undertaking to discuss the principle of that two years' limitation in an article which is not before the Convention.

The PRESIDENT—That point of order is well taken.

Mr. POND—Then I propose to discuss the propriety of its insertion in this article, which the gentleman's amendment proposes.

The PRESIDENT—In which the gentleman will be in order.

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Mr. POND—In order to do that, I suppose it is only necessary to show that it is an abomination in the other article, or in any article; and I do say—and I hope it will be proper to say so until this Convention finally adjourns—that to put an iron rule into the Constitution saying that no inhabitant of this State shall have a claim allowed, or shall be allowed to prefer a claim against this State for property taken, unless he does it in two years, whether he knows of it or not, is an abomination; and a Convention to revise the Constitution of the State, it seems to me, ought not to insert any such article in it. I therefore oppose any change in the language of this section, and insist upon it it is right as it is here; and it is within the power and competency of this Convention to regulate that other section that has it in, limiting all claims in any class of cases, I care not what they are, on the part of the citizen against the State, to two years.

Here the gavel fell, the speaker's time having expired.

The PRESIDENT stated the question to be on the substitute offered by Mr. Robertson for the original proposition of Mr. Alvord.

The SECRETARY read the substitute as follows:

"To strike out the sentence contained in the seventeenth and eighteeth lines and insert as follows:

"The law of limitation, either under this Constitution or by statute, shall prevail in favor of the State in the same cases as in favor of individuals."

The question was put upon the substitute offered by Mr. Robertson, and it was declared lost.

The question recurred on the amendment offered by Mr. Alvord.

Mr. KRUM—I think that by making the word "statute" "statutes" in line seventeen, as suggested by the gentleman from New York [Mr. Robertson], will remedy this whole difficulty. In my opinion, as has well been suggested by Mr. Van Cott, the constitutional enactment of two years with reference to claims for canal damages against the State already adopted stands in perfect harmony with the section of the Constitution under consideration. The one relates to canal damages and the other to the statute law as passed by the Legislature. Now if we make the word "statute" "statutes" we remedy the whole difficulty, and I move that as an amendment.

Mr. RUMSEY—I think the word "statutes" is in the original report.

Mr. FOLGER—The word "statutes" would not include all the limitations known to the law. Every lawyer knows there is a recognized doctrine in the courts of equity, which is called the doctrine of "stale demands." That would not apply, if the word "statutes" was used, and I suppose the intention of the framers of this article was to apply all limitations.

Mr. COMSTOCK—I would suggest that the words "laws of limitation" be used in place of the words "statutes of limitations." This would embrace both statute and common law.

Mr. KRUM accepted that modification of his amendment.

The question was put on the amendment offered by Mr. Krum, and it was declared carried.

The question then recurred on the amendment offered by Mr. Alvord, as amended, to insert in the eighteenth line after the word "individuals," the words "except as otherwise provided in this Constitution.

Mr. POND—I move, as a substitute to the amendment of the gentleman from Onondaga [Mr. Alvord], to insert the words "and not otherwise," so that it will read, "the laws of limitation shall prevail in favor of the State the same as in favor of individuals, and not otherwise."

The question was put on the amendment offered by Mr. Pond, and it was declared lost.

The question recurred on the amendment of Mr. Alvord, as amended, and it was declared lost.

Mr. FOLGER—I would ask the chairman of the committee, the gentleman from Steuben [Mr. Rumsey], when he deems that the statute of limitations will begin to run, as provided by this Constitution?

Mr. RUMSEY—Precisely as in other cases. The courts have held that statutes of limitations do not have a retroactive effect.

Mr. CHESEBRO—Will the gentleman allow me to ask a question of the Chair? Does the vote on the amendment of the gentleman from Onondaga [Mr. Alvord] carry with it the amendment of the gentleman from Onondaga [Mr. Comstock].

The PRESIDENT—That was adopted.

Mr. CHESEBRO—It was adopted as an amendment to an amendment which was lost. I inquire whether the vote on the amendment carried with it the amendment of the gentleman from Onondaga [Mr. Comstock].

Mr. COMSTOCK—It all went down together.

The PRESIDENT—The gentleman from Onondaga [Mr. Comstock] is right in his statement.

Mr. COMSTOCK—I move that in place of the words "statutes of limitations," the words "laws of limitation" be used, that amendment having fallen with the amendment of my colleague from Onondaga [Mr. Alvord].

The PRESIDENT—The amendment formerly offered by the gentleman from Onondaga [Mr. Comstock], was an amendment to the amendment offered by the gentleman from Onondaga [Mr. Alvord], his colleague, which was lost, carrying down his amendment, and it is now offered as an original proposition.

The question was put on the amendment offered by Mr. Comstock, and it was declared carried.

Mr. DEVELIN—I move to amend by inserting after the word "State," in the seventeenth line, these words, "and where the adjudication shall be against such claims or any part thereof, the same shall not be again considered by said court, unless the court of appeals shall order a new trial."

The question was put on the amendment offered by Mr. Develin, and it was declared lost.

Mr. LAPHAM—I will now renew my motion to strike out the words "increased or" in the twenty-fourth line. I do this, Mr. President, to make this section harmonize with the article on the judi-

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ciary in this respect. The provision in regard to judicial officers is that the salaries shall not be diminished during their term of office, but there is no prohibition against increasing them if there should be a necessity requiring it. The officers named in this section are to perform duties entirely judicial in their character, and the same reasons for leaving the Legislature at liberty to increase the salary, applies to them as to the judges.

The question was put on the amendment offered by Mr. Lapham, and it was declared carried.

Mr. SPENCER—I move to strike out the paragraph relating to the statute of limitation. It seems to me that it will be entirely ineffectual. It provides that the law in relation to limitation shall be the same in favor of the State as in favor of individuals. There are no laws in regard to limitation which can apply to the State. The laws of limitation, the statutes of limitation, are enacted in regard to certain classes of actions. There is, and there can be, no such thing as an action against the State, and, therefore, when the courts come to apply, or undertake to apply, this provision of the Constitution to claims which may be made against the State, which are not actions or any thing like actions, it will be found that its operation cannot be made available.

Mr. HALE—I wish to suggest whether the retention of this paragraph would not make the existing statute of limitations in all cases govern claims against the State; whether in case of any change in the general statute of limitations the change would apply to claims against the State. It seems to me, with deference to gentlemen who think otherwise, that it would fix, as applicable to the claims against the State, all the statutes of limitation which may exist at the time of the adoption of the Constitution. The language is "the laws of limitation." Perhaps if the word "the" was not there, the construction would be different, but as the language now is, it seems to me that there is an objection to it.

Mr. MERRITT—If this statute of limitation is intended to cut off the application for claims for damages on any account whatever, I am opposed to striking it out. A mere statutory provision against the allowance of claims for certain debts amounts to nothing, as the past experience of our Legislature shows, because what one Legislature may prescribe with reference to claims to be presented may be repealed at any time; and the difficulty growing up under this system of allowance of claims arising at an anterior date is that they are presented in such a way as to avoid that careful scrutiny and examination which would occur if they were presented within a reasonable time; and it is fair to assume that claimants having a just and reasonable claim against the State will have sufficient interest in it to present it within a reasonable time; and I suppose that six years will be a reasonable time. I hope this will be retained, therefore, and not stricken out. If there is any question as to affecting other laws or other classes of limitation, that may perhaps be modified, but this feature should be retained, that no claim should be allowed after it has run a reasonable length of time.

Mr. GRAVES—Would not the same object be obtained if the seventeenth and eighteenth lines were stricken out, and if from the thirteenth line the section read: "In all other respects such court shall be governed in its adjudications by the legal rules which have heretofore existed between the State and its citizens, according to the course and practice of the common law as modified by the statutes of this State?" Would not that allow the statute of limitations to operate between the State and individuals as it now does? Would it not be well to strike this out?

Mr. MERRITT—The State, standing in a different relation from ordinary parties to be sued, it seems to me if there is any doubt about it at all that it would be safe to have the clause in.

Mr. M. I. TOWNSEND—In the present condition of the work of this Convention, I hope this provision will not be stricken out. It may be proper, as indicating the shape that our work ought to assume, and to say that we have properly provided that persons having claims growing out of canal injuries shall have no relief unless those claims are presented within two years. It seems to me we should be in a very awkward position to say that persons having claims of that character should not be heard, no matter what the circumstances were—whether a man was absent in Europe for a period of years, whether a man was confined to his bed by sickness, whether a man was in a lunatic asylum, whether a man was a minor when the claim arose—to say that he should have no opportunity to be heard after two years; but if he had a claim against the State of any other nature under heaven, he may present it forever. I will not speak ill of any work which this Convention has accomplished; but I do not believe that the members of this Convention, after this Constitution shall go into effect, will have any particular occasion to feel proud of that two years' provision, and I think we shall feel very much worse if it could be thrown into our faces by persons who had sustained injuries along the line of the canal, and who had been cut off by the accident that the claim had run two years, from obtaining redress, that we, after enacting that provision, deliberately sat down and provided that any other claim might be presented forever.

Mr. GRAVES—Mr. President—

The PRESIDENT—The Chair must remind the gentleman that he has spoken once on this question.

The question being put on the motion of Mr. Spencer to strike out, it was declared lost.

Mr. OPDYKE—I move to amend by striking out a portion of the fourth line, and the whole of the fifth, so that the close of the sentence shall read as follows: "in which court shall be adjudicated all claims against the State." The words I propose to strike out provide that the court shall adjudicate "all such claims against the State as the Legislature shall from time to time, by general laws, direct." I hold that this section is intended to transfer claimants from the Legislature to this court, which it proposes to create. In doing that I suppose it is intended that it shall adjudicate all the claims grounded in justice or equity against the State. I want to know what general law the Legislature could pass in refer-

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ence to such claims, other than to say that all claims grounded in equity or justice should be adjudicated by this court. If they said any thing less than that, they would discriminate; it would be invidious; it would place some claimants on a better basis, and others on a worse. We certainly do not desire that any thing of that kind shall take place. What we desire is that all just or equitable claims shall come before this court, which is to decide whether they are grounded in justice and to determine their amount. If we leave the section as it stands it may compel claimants to go to the Legislature as well as to the court. I presume the court is intended to relieve the Legislature, and to relieve claimants from going there at all, and to send them to this court, where justice will be administered to them. It was moved in committee to strike out this clause, and debated; and I am satisfied that a large majority of the committee were prepared to adopt it; but as it was reached late in the evening its importance, I think, was overlooked. I hope, it will now, be stricken out.

Mr. BELL—I do not understand this provision as the gentleman from New York [Mr. Opdyke] does. I understand it to provide that the Legislature may, by general laws, from time, to time prescribe the mode and manner by which these claims are to be brought before this court. I see no provision in the article itself by which the claims can be brought before the court. It is left to the Legislature to prescribe such forms, as in their judgment they may think best, and that from time to time. It seems to me it is important that this clause should be retained.

Mr. LIVINGSTON—I do not understand the language as the gentleman from Jefferson [Mr. Bell] does. I would propose an amendment, if it is in order, to meet his views, so as to read as follows: "all such claims against the State, in such manner as the Legislature shall from time to time, by general laws direct." I understand the language now to refer to the claims, and not to the manner in which they should come before the court. That will allow the Legislature to provide the manner in which the claims shall be brought before the court; but give the court jurisdiction over all claims.

Mr. RUMSEY—The section itself, I think, provides all that is necessary and all that is contemplated by the amendment of the gentleman from New York [Mr. Opdyke]. It declares the manner in which the court shall proceed, that it should be according to the custom of the common law. The reason why this language was used in describing the several cases which should be sent to this court, was that it was exceedingly difficult to find language to include every imaginable case which ought to be there disposed of. Any enumeration of claims, individually or by classes prescribed in the Constitution and directed to be sent there, would seem to exclude all other claims not so enumerated, and this construction would practically defeat the object of the committee which was to provide a tribunal for the disposition of every disputed claim against the State. Gentlemen will remember this question was discussed in committee, and this language was approved of then, expressly for the reason, that if any case should arise that was by any chance not provided for by the Constitution the Legislature might include that particular claim in a general law, and let it go before this court. I think the language of the section is right, and will be found to cover every imaginable class of cases. We must conclude that the Legislature will do something that is right, and that it will, in passing a general law under this section, so do it that every claimant may have a chance to seek his remedy in this court.

Mr. DALY—With regard to the amendment proposed by the gentleman from Kings [Mr. Livingston], the gentleman will perceive that in the subsequent provision of the section it was a matter of discretion that "in all other respects the court shall be governed in its adjudications by the legal rules which have heretofore existed between the State and its citizens, according to the course and practice of the common law as modified by the statutes of this State;" and this provision embraces all that is comprehended by inserting the words "in such manner." It embraces the mode of procedure according to the course and practice of the common law as it is modified under the statutes of this State."

Mr. LIVINGSTON—I only offered my amendment to meet the views of the gentleman from Jefferson [Mr. Bell] to obviate the difficulty. I have no intention of pressing it, and will withdraw it on the statement of the gentleman from New York [Mr. Daly].

Mr. KRUM—I move to amend by striking out the word "such," in the fourth line.

The PRESIDENT—That is a part of the amendment now pending.

Mr. KRUM—I would inquire, does not the amendment include any thing more than that?

The PRESIDENT—It does.

The amendment was then read by the SECRETARY.

Mr. LAPHAM—I ask for a division, so that the question may be taken separately on striking out the word "such."

The PRESIDENT—The division will be made.

Mr. KRUM—I think by striking out the word "such" we remedy the whole evil without striking out the balance. It now reads, "in which court shall be adjudicated all such claims against the State as the Legislature shall from time to time, by general laws direct." The word "such" leaves it to the Legislature to determine what claims shall be adjudicated, while by striking it out the Legislature are compelled to provide for the adjudication of all claims against the State. If the balance is stricken out, as proposed, it will leave the Legislature to determine the manner of getting the claim before the court while if the word "such" is stricken out it will compel all claims to be adjudicated by the court.

Mr. OPDYKE—I accept the amendment of the gentleman from Schoharie [Mr. Krum].

The question being put on the amendment of Mr. Opdyke as thus modified, it was declared carried.

Mr. FULLERTON—Mr. President, I offer the following amendment:

Mr. KRUM—There seems to be some question

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as to the result of this vote. I would like to inquire fo the President how the section is now left.

The PRESIDENT—The Convention adopted the amendment originally proposed by the gentleman from New York [Mr. Opdyke], with the exception of the word "such," which was omitted.

SEVERAL DELEGATES—No! no! that was stricken out.

The PRESIDENT—The Chair states it erroneously. That was stricken out; and the rest of the clause originally proposed by the gentleman from New York [Mr. Opdyke] to be stricken out, was retained. It will be read by the Secretary as amended.

The SECRETARY—As it was adopted by the Convention the word "such" was stricken out of the fourth line.

Mr. CHESEBRO—There is a misunderstanding here now, as to what is the effect of this vote on Mr. Opdyke's amendment. As I understand it, his amendment is adopted by the Convention.

The PRESIDENT—The vote was upon the amendment offered by the gentleman from New York [Mr. Opdyke], with the amendment accepted by him.

The SECRETARY read that portion of the section as amended, as follows:

SEC. 10. There shall be a court of claims, to consist of three judges, to be appointed on the nomination of the Governor, by and with the advice and consent of the Senate, in which court shall be adjudicated all claims against the State, as the Legislature shall from time to time, by general laws direct.

Mr. FULLERTON—I move to strike out all after the word "law," in the twenty-fourth line. I cannot understand the force of the reasoning which argues in favor of the idea that the Legislature shall have the the power to increase the pay of these officers during their continuance in office, and shall not have power to diminish it. If I understand the argument, it is simply this—the change in the times has been such as to require that this pay should be increased during the continuance of these officers in office. There may be much force in that argument. But the other argument is equally forcible—that the change in the times may make it very proper that this compensation should be reduced. Now, I would take from the power of the Legislature the right either to increase or diminish the pay, or I would confer the right on the Legislature to do either, as it may seem to them proper.

The question was put on the motion of Mr. Fullerton to strike out the last clause of the section, and it was declared lost.

Mr. SPENCER—I move to strike out all from and including line six down to and including the word "State," in line seventeen, for the reason that the matter embraced is legislation. It is not the proper business of this Convention, but a proper subject of legislation. Besides this, it prescribes rules which may be found entirely impracticable. It may be that the gentlemen who drew this section can explain what is meant by the provisions of the thirteenth, fourteenth, fifteenth, sixteenth, and part of the seventeenth lines. I confess that with all my acumen—though it is not great, to be sure—I am not able to understand it. "In all other respects such court shall be governed in its adjudications by the legal rules which have heretofore existed between the State and its citizens, according to the course and practice of the common law as modified by the statutes of this State." Now, I would like to know if, in controversies between the State and its citizens upon claims against the State, the course and practice of the common law has ever been adopted.

Mr. DALY—I call the gentleman's attention to the fact that the portion of the section he now proposes to strike out, was the subject of deliberate discussion by the committee for an entire evening, in which the views of gentlemen were fully expressed on this particular provision; and it was adopted after mature consideration and great deliberation. Very possibly the gentleman was not present, and may not therefore have heard the reasons assigned by the various gentlemen who spoke on the several propositions for amending this part of the section.

The amendment offered by Mr. Spencer was read by the SECRETARY as follows:

To strike out from line six to line seventeen, as follows:

"Such claims shall be tried without a jury, but the facts found by the court on the proofs shall be stated in each adjudication. In all cases where such claims shall amount to five hundred dollars or more, and be for the value of, or damages to real estate, the judges of said court shall, and in all other cases may, view the property in question, and in deciding thereon shall consider their own estimate of such value or damages in connection with the evidence in the case. In all other respects such courts shall be governed in its adjudications by the legal rules which have heretofore existed between the State and its citizens, according to the course and practice of the common law, as modified by the statutes of this State."

The question was put on the amendment offered by Mr. Spencer, and it was declared lost.

Mr. LIVINGSTON—As there seems to have been some misapprehension about the amendment originally offered by the gentleman from New York [Mr. Opdyke], I will now move the further amendment to strike out in the fourth line, after the word "State," down to and including the word "direct," being the words "as the Legislature shall from time to time, by general laws direct."

The question was put on the motion of Mr. Livingston, and it was declared lost.

Mr. E. BROOKS—I propose a verbal amendment in the third line, which has been adopted by the Committee on Revision, in all such cases, and that is to strike out the word "advice," so that it will read, "on the nomination of the Governor, by and with the consent of the Senate."

The amendment was made.

Mr. POND—I propose to amend by striking out after the word "judges" in the second line, down to the word "Senate."

The PRESIDENT—The amendment is not ger-

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mane to that of the gentleman from Richmond [Mr. E. Brooks].

The question was then put on the motion of Mr. E. Brooks, and it was declared carried.

Mr. POND—I now move to strike out after the word "judges" in the second line down to the word "Senate" in the third line, and inserting "to be elected by the people," and on that I ask the ayes and noes.

A sufficient number not seconding the call, the ayes and noes were not ordered.

The question was put on the amendment offered by Mr. Pond, and it was declared lost.

Mr. BAKER—I move to strike out the word "its" in the fourteenth line, and insert in place thereof "in the trial of causes and"; strike out "the" in fourteenth line, also strike out all after the word "rules" in fourteenth line down to and including the word "citizens" in fifteenth line, and insert in place thereof the following words: "of evidence."

As the section now stand it provides that "in all other respects such court shall be governed in its adjudications by the legal rules which have heretofore existed between the State and its citizens." The question has been asked by the gentleman from Steuben [Mr. Spencer] what that clause meant, and the gentleman who professed to answer it has not given an intelligent answer to it. I am not aware of any rules of evidence that have been established between the State and the citizen, or any rules of proceeding. I suppose the intention of the framers of the section was that these trials shall be governed by ordinary rules of evidence as in other courts between citizen and citizen. If amended as proposed, it will read:

"In all other respects such court shall be governed in the trial of causes and adjudications by legal rules of evidence according to the course and practice of the common law as modified by the statutes of this State."

Mr. DALY—I will state to the gentleman who has just taken his seat [Mr. Baker], with regard to his suggestion, that I rose to answer the question of the gentleman from Steuben [Mr. Rumsey] and did not do so, that the very portion to which he now refers was the subject of particular discussion on the evening to which I have referred. The rules of common law which prevail between the citizens of a State were particularly referred to and pointed out; and as the whole subject was gone over and discussed in Committee of the Whole, I do not feel called upon to repeat the matter here. The gentleman may not have been present during that discussion.

Mr. M. I. TOWNSEND—I would ask the gentleman from New York [Mr. Daly] what he understands to be the meaning of the provision of this section or how it was understood by the committee? "In dealings between a State and its citizens," what does the gentleman from New York [Mr. Daly], and what did the committee understand by that provision, if he will favor us?

Mr. DALY—Mr. President—

The PRESIDENT—The gentleman has already spoken on the question, and is debarred under the rule.

Mr. MERRITT—I wish to ask whether, as between a State and its citizens, there is not some presumption in favor of the State; whether there are not some rules which do not strictly apply as between citizens. If that is so, then this becomes very clear.

Mr. RUMSEY—The object of the gentleman from Montgomery [Mr. Baker] seems to be to change this from the establishment and recognition of certain principles of right, properly applicable between a State and its citizens, to a mere provision for the practice of the court on the trial causes before this court. Such was not the intention of the provision. Its object was to recognize and adopt a well settled principle which has long prevailed and which ought not to be surrendered. I apprehend that every gentleman in this Convention knows that the State, in the management of its affairs, is exempt from certain causes of action that individuals would not be exempt from. If the State—

The hour of two o'clock having arrived, the PRESIDENT announced that, under the standing rule, the Convention would take a recess until seven o'clock.

EVENING SESSION.

The Convention re-assembled at seven o'clock P. M., the PRESIDENT *pro tem.*, Mr. FOLGER, in the chair.

The PRESIDENT *pro tem.* announced the pending question to be on the amendment of Mr. Baker to strike out the word "its," in the fourteenth line, and insert in place thereof the words "in the trial of causes and;" and to strike out, also in the fourteenth line, all after the word "rules" down to and including the word "citizens," in the fifteenth line, and insert in place thereof "of evidence."

Mr. VERPLANCK—Is an amendment now in order?

The PRESIDENT *pro tem.*—The Chair understands that an amendment is in order.

Mr. VERPLANCK—I move, as a substitute for the amendment of the gentleman from Montgomery [Mr. Baker] to strike out all after the word "case," in the thirteenth line, down to and including the word "State," in the seventeenth line.

The PRESIDENT *pro tem.*—The Chair is of opinion that that amendment is not now in order, it being a proposition to strike out. The Convention is first entitled to perfect before an amendment to strike out can be entertained.

Mr. VERPLANCK—Then I will renew my motion at the proper time.

The PRESIDENT *pro tem.*—The question now is on the amendment of the gentleman from Montgomery [Mr. Baker].

Mr. VERPLANCK—Then let me say a word upon that subject. The section provides that the court, in addition to hearing testimony, are to view the premises, when damages to real estate are claimed, and to take into consideration their own opinion of the value of the premises, in deciding the case. In that regard the court departs from the usage of the common law, but in no other; and, therefore, if the section should be altered as indicated by the amendment I have suggested, the court would have no power to de-

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part generally from the common law rules, but only of departing from those rules as authorized by the section; and it seems to me that it would be better to strike out the entire clause, instead of amending it as proposed by the gentleman from Montgomery [Mr. Baker].

Mr. RUMSEY—The question whether this article should be adopted or not is one that has been very fully discussed in the Convention already, and it is absolutely necessary that a provision should be adopted, provided you undertake to restrict the Legislature from acting upon all the individual private claims that come before that body. That has been done by the provision already adopted, and now, if you do not adopt this, or some other provision of the kind, you leave all this large class of claims, many of them entirely right, I believe, without any sort of remedy. This section was adopted for the express purpose of providing the only remedy left for these claimants if the other provision to which I have referred, restricting the Legislature from legislating upon private claims, is to be continued in the Constitution. The proposition of the gentleman from Montgomery [Mr. Baker] to strike out this portion, and, in lieu of it, to insert something else, amounts simply to this: He proposes to make a rule of practice, instead of doing as the committee intended when they adopted this proposition, to lay down a rule of law from which that court could not and should not depart. Now, it is perfectly well understood that in adjudicating upon claims, our courts at present are at liberty to sustain a claim as between individual and individual, which would not be, and which never has been recognized as a claim between an individual and the State. If an individual makes an improvement he is responsible for all the incidental damages which follow from that improvement. If an individual has an agent who is acting for him, the individual is responsible for whatever injury results from the negligence of that agent; but the State has never held itself responsible and ought not to hold itself responsible for any such causes of action. The State has uniformly been in the habit of creating highways, or rather the highways have been constructed under the authority of the State, and then handed over practically to the officers of the towns, who thereafter have had entire control in the management of them; and of course the State has never held itself responsible and ought not to hold itself responsible for any damages resulting from those roads being out of repair, or any thing of that kind; and the State has never been held responsible by any legislative body for damages resulting from the acts of persons who have had charge of such highways or other public improvements. The improvements are made for the benefit of the whole State, and any damages that may incidentally result from any defect in the making, or any negligence in the work of those improvements, have never been held as a charge against the State. The object of this section was to impose a rule of law that should be imperative upon the courts, that hereafter they should apply precisely the same rule with regard to liability of the State which has always heretofore been recognized exempting them from actions of this kind. That is the object of this provision, but if you strike it out you leave the courts at liberty to declare the law between the State and the citizen in these claims for damages, to be precisely as it is now between individual and individual; and surely that should not be so.

Mr. VERPLANCK—Will the gentleman allow me to ask him a question?

Mr. RUMSEY—Certainly, sir.

Mr. VERPLANCK—What the article proposes to retain, is the legal rule, which has heretofore existed between the State and the citizen. Now, if such legal rule exist, and you omit this provision entirely, I would like to know if the courts established by this article are not bound by those legal rules.

Mr. RUMSEY—Perhaps they may be; but the committee did not intend to leave any thing in doubt upon that subject. They did not intend to force the State in this court as a defendant, and then to allow the court to declare the law between an individual and the State to be what it is between individual and individual in such cases. It is perfectly well understood that heretofore the State has not been subject to suit; but if you bring the State in and make it defendant and subject to suit, unless you make some restriction in the operation of the law upon the State, it must surely come in subject to all the rules and obligations existing by the common law between citizen and citizen. There can be no other result from striking this out, except to make the State subject to the rules of law which prevail in determining the rights of citizens in such cases, unless those rules are restricted in their operation upon the State so as to make it chargeable only with such damages as the State has been held liable for under the common law, as heretofore administered.

Mr. VERPLANCK—Will the gentleman allow me to ask him another question?

Mr. RUMSEY—Yes, sir.

Mr. VERPLANCK—As you propose to guard and protect this immunity of the State, would it not be better to do it by direct language, and not use the term "legal rule" upon the subject?

Mr. RUMSEY—I have no particular partiality for the words used here. Any other words that will as well or better accomplish the purpose, will suit me as well as these; but I desire that that rule of law should be retained, provided this court is to be established at all. I think that the words that are used here do retain that rule of law, and retain it in such a way as that there can be no mistake about it; but if other words will do it better, I have no objection to adopting them.

The question was put on the amendment of Mr. Baker, and it was declared lost.

Mr. GRAVES—I desire to amend the sixth and seventh lines as follows: Strike out of the sixth line the word "without" and insert the word "by" before the words "a jury" and add after the word "jury" these words, "when demanded by the claimant," and insert after the word "proofs" in the seventh line the words "if tried without a jury," so that the sixth and seventh lines shall read thus: "Such claims shall be tried by a jury when demanded by the claimant,

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but the facts found by the court, on the proofs, if tried without a jury, shall be stated in each adjudication." Sir, this Convention must be aware that the claims presented against the State are claims arising upon property taken by the State without the consent, and in most cases against the will of the claimants. This court that it is proposed to organize is to be a court organized by the State itself without the consent of the claimants, and therefore when a claim is to be adjudicated the claimant is forced to come before a tribunal which he has had no hand in forming, a tribunal appointed by the State for the purpose of serving the specific ends of the State, protecting and securing the rights of the State against the claimants that are scattered all along throughout the State. Now, it is manifestly unjust to compel a man whose property has been taken from him without his consent and against his will to go before a tribunal directed or organized by the State without his assent or knowledge, thus depriving him entirely of any choice in the selection of the tribunal that is to determine his rights and the value of his property so taken. While I concede to the State the right to take private property for public purposes, I also claim that the State itself should be just in the compensation that it awards to the individual whose property is thus taken, and a claimant whose property has been taken in this way certainly should have some right, some choice, in the tribunal that is to determine the value of that property or the amount of damage he has sustained. The Constitution of 1846, when it gave to the State the power to take property for public purposes, also determined that the right of the claimant should be decided by a jury or by three commissioners appointed by the court authorized for that purpose. Now is it right or just that the State should select its tribunal, and, against the will of the claimant, and without consulting him, say that by this mode, and this mode alone, his rights are to be determined? This tribunal may be a good tribunal but—

Mr. LAPHAM—Will the gentleman allow me to ask him a question?

Mr. GRAVES—Yes, sir.

Mr. LAPHAM—Are not these damages now appraised by the canal appraisers, who are appointed in the same manner.

Mr. GRAVES—I believe they are, sir, but that does not show that it is just by any means. There is a manifest injustice in that tribunal; and all along the line of the canals complaints have been made by men whose property has been taken for public purposes without their consent, against the judgment and decisions of the canal appraisers. Now, while I accredit to those canal appraisers good judgment and honest intentions, I still contend that the court before which these claims are to be tried, should at least afford to the claimant himself the opportunity of being satisfied that the tribunal before which his claim is to be tried is a fair and just one, and a tribunal in part of his own selection. Why deny in these cases to the claimant the right to have his claim settled by a jury, any more than you would deny that right to the claimant in a controversy between individuals. If an individual in my neighborhood should assume to control my property, and get possession of it, and I should desire to waive my action of trespass and to bring an action of assumpsit against him, the law would permit me to try that action before such a tribunal as I pleased, before a court and jury, or before a court without a jury, just as I should choose. Now is it any more than just that an individual whose property has been taken without his consent and against his will—choice property, perhaps—should have some opportunity to have his rights determined by a tribunal of his own choice, the same as he would have in a controversy between himself and an individual neighbor. In my judgment it is no more than just. In many instances perhaps, this right might be waived, and a man might be willing that his cause should be settled by this State tribunal; but if he choose to have it tried in the ordinary manner by a court and jury, I certainly think he ought to have that right.

Mr. LAPHAM—I have heard no serious complaints made of the mode of determining these claims for damages, so far as they are within the jurisdiction of the canal appraisers. The trouble from which this State has suffered so seriously, is this—that after the canal appraisers have passed upon claims, and have rejected them, as wanting in equity and justice, appeals have been made to the legislative power of the State, and claims which had been rejected as unjust, have been, by the Legislature, authorized to be audited and allowed; and, further, claims that have been rejected by one Legislature have been authorized and allowed by a subsequent Legislature. Now, Mr. President, the object of this provision is, to substitute in the place of the canal appraisers, and in the place of the Legislature, in dealing with these cases, a tribunal to determine entirely this whole class of claims, and it is the intention of this section to prescribe, in general terms, the rules upon which these claims are to be determined, and the limits within which they are to be presented; in other words, the intention of this section is to take entirely away from the legislative power all control over this subject, and to merge in this court of claims the exercise of the functions of this kind which are now performed by the canal appraisers and by the Legislature. In addition to that, this section provides, and wisely provides, what this State has not enjoyed heretofore—it provides that every claim which is thus prosecuted shall be attended to by a solicitor in behalf of the State. One great trouble which has existed heretofore in regard to this class of claims has been that, the State has not been represented before these tribunals. Claimants have come before the Legislature with their claims well digested, their counsel having prepared their cases carefully in advance, and have thus secured a legislative act, and then have gone before the canal board or the canal appraisers in pursuance of that act, and literally taken judgment by default for the amounts of their claims. Now, the object of this provision is to close up these avenues of injustice by which the treasury of the State is annually robbed of hundreds of thousands of dollars. I deem this provision of this section, as it has been reported, a wise and well guarded provision, and therefore I have opposed the proposition to strike out of the

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body of this section those provisions which determine to a great extent by what rules this court shall be governed in passing upon this class of claims. Now, heretofore the rule has been that the State could not be prosecuted at all. Therefore the appraisers were constituted, and therefore the right to appeal to the legislative power has been so largely exercised. The object contemplated by this provision, while it does not subject the State to prosecution in the strict sense of the term, is to place the question of the obligation of the State in such cases in the hands of a court properly constituted and governed by rules which are prescribed in the body of the Constitution itself, so as to secure justice to every class and description of claimants, to prevent the possibility of appeals for l egislative action, and to prevent the bringing up of old and stale demands which have been rejected by tribunal after tribunal, and the making of reiterated applications for relief which have already been once or more than once denied.

Mr. COMSTOCK—I move an amendment in lines eight, nine and ten of this section. As the section now stands, in all cases where the claim amounts to five hundred dollars and relates to real estate—is for the value of or damages to real estate—the court must go and examine the premises. I move to strike out in lines eight and nine the word "shall" and "in all cases," so that it will read thus: "and in all cases where such claims shall be for the value of or damages to real estate the judges of said court may view the property in action." I was not present when this article was considered in Committee of the Whole, and I do not know therefore whether the point to which my amendment relates was adopted or not. It does seem to me, however, a very unsuitable and inconvenient provision to be placed in the Constitution, a provision which would make it imperative in all cases for the judges of this court to travel to view the premises in relation to which the claim was brought. Our system of internal improvements penetrates to every part and corner of the State, and as these claims will arise in every portion of the State, the effect of this provision will be to make this a rambling, traveling court. I do not think it will be found that the provision will work well as a permanent and unchangeable one. I am better satisfied to have the Constitution allow the judges to go and view the premises in all cases where real estate is affected, but I would not make it imperative upon them to do so. The thing proposed may require some legislation. The Legislature will organize this court and make such provision on this particular subject as it pleases. It will be required that the sittings of this court shall be held in convenient parts of the State, and in different places, but I feel myself opposed to an imperative provision, saying that in all cases these judges must travel and examine the premises in regard to which claims shall arise.

Mr. ALVORD—I suppose this is only for the purpose of constitutionalizing the present law upon this subject, so far, at least, as it relates to the canals. The law now requires the canal appraisers to visit in person the locality where the damage is said to have occurred, or where property has been taken, and upon that view of the premises, in conjunction with the other testimony presented, to make up their judgment. I think that, taking into consideration the fact that this has been the past practice of the State, and has eventuated, so far as the State is concerned, in its getting property at its fair value, where it has been taken for the purposes of the State, it may be well enough to retain, limited as it is here, the provision that this court must visit the premises in cases involving this amount or more; and that in cases involving less value, they may, or may not, as they think proper. It is a perambulating court, and must of necessity be so, in connection with our system of internal improvements. The practice has always been, and the law is, that the canal appraisers must go to the *locus in quo*, must examine into the matter on the premises, and judge and award damages from the evidence that is adduced before them in addition to that derived from their own personal observation; and it is well enough if we are going to constitutionalize this court, that we should also put upon it the same duties that now rest upon the canal appraisers, the imposition of which upon those officers, has been found to benefit the interests of the State.

The question was put on the amendment of Mr. Comstock, and it was declared lost.

Mr. VERPLANCK—I move to strike out the word "legal" in the fourteenth line, and to insert the word "and" before the word "according" in the fifteenth line, so that the sentence will read "in all other respects such court shall be governed in its adjudications by the rules which have heretofore existed between the State and its citizens, according to the course and practice of the common law as modified by the statutes of this State." There are no such things as legal rules upon this subject existing between the State and the citizen; nor are there any legal rules which obtain "according to the course and practice of the common law as modified by the statutes of this State;" but if this can be amended as I have suggested, it will then read that "in all other respects the court shall be governed in its adjudications by the rules which have heretofore existed between the State and the citizen, and according to the practice of the common law, as modified by the statutes of the State," and I think that will reach the object in view.

Mr. KRUM—I would like to inquire of the gentleman who has last poken (or of any other of the gentlemen who have this subject in charge) what rules he refers to, or what rules this section refers to as "heretofore existing between the citizen and the State."

Mr. M. I. TOWNSEND—I am in considerable doubt as to what ought to be done with that clause of this section to which the amendment of the gentleman from Erie [Mr. Verplanck] refers after what has been told us by the gentleman from Ontario [Mr. Lapham]. I am still a little afraid of requiring, by constitutional enactment, this court that we create, to act in its decisions according to the rules that have heretofore existed between the State and its citizens; for, if I understand those gentlemen correctly, and their memory con-

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curs with mine, there has been no conceivable claim that could be set up against the State that soonest or later has not been successful. Now the gentleman from Schoharie [Mr. Keum] asks what is the meaning of these words "the rules which have heretofore existed between the State and the citizen," and he gets no answer. I can only conjecture that this expression refers to the action of the Legislature in regard to these claims. If so, it seems to me that we are constitutionalizing all the wrongs of this kind that have been done by the Legislature of this State, and making it necessary that these judges shall act upon the same principles as long as this Constitution shall stand. If that be so, I, for one, am opposed to this provision, and I believe that we will be a great deal better off if we apply the rule which is older than our Constitution, and better — that the State should do to others as it would have others do to it. For myself, I should not be afraid of having the State of New York do justice. For myself, I should be willing to pay my share of the taxes of the State which would enable it to do justice to all men—entirely willing: and I do not believe that an attempt on the part of this Convention in framing the Constitution to avoid the State's meeting any fair liability, at all events, by the use of such phrases as are found in this clause, will be likely to be successful in saving a dollar to the State. On the contrary, it struck me when I first read this provision, and I have been since still more convinced of it, that we are legalizing, and not merely legalizing, but constitutionalizing, all the wrongs that the Legislature have done in times past in cases of this kind—if they have done wrongs; and if that be not so, I confess myself utterly unable to conceive the meaning of this portion of this section. Now, the gentleman from Steuben [Mr. Rumsey], says that the State does not hold itself liable for the actions of its agents, and yet I am perfectly well aware that time and again the Legislature by contributions has indemnified individuals for injuries which they have sustained from the negligence of the agents of the State. I remember the case of a canal-boat which sank between here and Cohoes—a matter with which I had no connection. It sank in the canal, and it was claimed that it sank from a defect in the canal, owing to the negligence of the superintendent of this section of the canal. Damages were claimed for that loss, and the Legislature paid them. At a subsequent session of the Legislature the same question came up and the former action was confirmed; and I think it will be found that in a great variety of cases the Legislature have done this. Now, if I am right in regard to the significance of the phrase used here in this sentence, a reference to that act of the Legislature would compel this court, in all coming time during the existence of this Constitution, to allow claims for damages sustained on occasions of this kind. I believe the words used here are exceedingly dangerous in their character, and I am very much at a loss to determine whether it is wise to enact them as a part of this Constitution. I take occasion to say so here on the amendment offered by the gentleman from Erie [Mr. Verplanck], an amendment which I think does not help the proposition. I would rather leave it as it is than strike out so little, but if a motion is made to strike out the whole I will support it.

Mr. ROBERTSON—With a view of reaching the difficulty which has been described by the gentleman from Rensselaer [Mr. M. I. Townsend], I would propose an amendment to the amendment of the gentleman from Erie [Mr. Verplanck], viz.: to strike out the word "legal," and insert after the word "rules" the words "of law governing the relations," so that the section may read, "in all other respects such court shall be governed in its adjudications by the rules of law governing the relations between the State and its citizens;" so that we should not be compelled to have recourse to the past to decide hereafter what should be the rights of citizens in reference to claims on the government, and in order that we might escape all the difficulties that would arise in regard to the meaning of the word "legal." By these means the law would be established that whatever duties are to be maintained by the State toward its citizens (and the rules of law which may hereafter prevail in regard to that subject will, I apprehend, in their structure and origin, be in most respects the same as those that have heretofore existed), will control in regard to the determining of claims, without the necessity of having recourse to the past for the purpose of determining what have been the rules which have heretofore existed.

Mr. HALE—I would like to ask my friend from New York [Mr. Robertson], whether there are any rules of law governing the relations between the State and its citizens in the sense in which he has used that phrase here; that is, in reference to claims of this kind; and if so, can he state briefly what they are or where they are to be found?

Mr. ROBERTSON—I apprehend, sir, that there cannot be much difficulty, under the system of constitutional law which regulates so completely and minutely at every point the powers and duties of the State, in ascertaining what the rules of law are which govern the relations of the State to the citizen, and I presume that this is more near to a definite determination of what should be the rules governing in such cases than that which would refer us to the past, and which the gentleman from Rensselaer [Mr. M. I. Townsend] has so energetically commented upon as compelling us to refer to the rules which have been heretofore adopted; because in the future, the rules which govern the relations between the State and its citizens are those which can certainly be derived from the general structure of the government and the specific relations between the State and the citizen in any given case.

Mr. ALVORD—I would ask the gentleman from New York [Mr. Robertson] whether if his amendment prevail, we do not deprive every individual of any right of claim against the State? I think the State would be the gainer by that, and I do not know that the parties claimant would be so much injured by it, but it strikes me that under the proposition of the gentleman from New York [Mr. Robertson] under the present Constitution no claimant would have the right to come before the court at all.

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Mr. ROBERTSON—If I am not trespassing upon the time and patience or the Convention, I will say that I apprehend that there can be no difficulty in determining that. If the State is willing to be held responsible for the acts of its officers in trespassing upon the rights of private individuals, then there can be no difficulty in determining what should be the rules of law between the citizens of the State and the State. The only reason why the State cannot be sued, why citizens are not entitled to recover damages against it, is that the State in its sovereign capacity cannot be trammeled in its action by suits in courts of justice. I apprehend that the difficulty is much less in the proposition that I have offered, and that it will be much less difficult to determine hereafter from the whole structure of the government, to which I have heretofore alluded, and from the form in which that government, representing the State, has consented to be impleaded in the courts, for the purpose of determining how far the State has trespassed upon the rights of individuals, than it would be to refer to those uncertain rules by which the canal boards and other such irregular tribunals have been guided in determining what damages should be given by reason of injury resulting to private citizens from the negligence of State officers.

Mr. HALE—I hope that the amendment offered by the gentleman from Erie [Mr. Verplanck] will prevail, and then, if a motion shall be made to strike out the whole paragraph in relation to the rules which are to govern the court of claims, that that motion also will prevail. I have recently been unfortunate enough to be placed in a position where it has become my duty to examine, as a practical question, what the rules are which govern the relations as to claims against the State on the part of its citizens. I have not yet completed the examination, or made it very thorough, but with the little attention that I have bestowed upon the subject, I confess that I have found it exceedingly difficult to determine whether there are any legal rules between the State and its citizens in these matters. I am aware that there are opinions which have been written by gentlemen in official positions, and which lay down certain principles, which if acted upon by the Legislature would perhaps constitute rules. I am also aware, however, that the principles enunciated by different gentlemen who have held responsible positions in the Legislature and in the canal board, have not been entirely uniform and consistent, and that the action of the Legislature upon these claims (which I suppose determines the rules, if there are any) has been very far from uniform or consistent. I recollect that I happened to be in the Senate once last winter, when the report of the committee on claims adverse to a certain claim came before that body. I remember that several lawyers in that body opposed the claim, and that they cited certain opinions—among them, I think, an opinion by a gentleman who was formerly Lieutenant-Governor of this State, according to which opinion it was clear that the claim in question ought not to be allowed; and I know that when the vote was taken, the Senate, by a very decided majority, overruled the report of the committee on claims, and allowed the claim. The difficulty, as it strikes me, is, that there are no settled rules existing, governing the relations between the State and its citizens in such cases; and for the very obvious reason that the law gives no remedy to the citizens against the State. It is in one sense a matter of favor for the State, either through the Legislature or through other tribunals, to allow any damages to be recovered against itself, and the State has adopted no fixed or uniform rules in bestowing such favor. If this proposed court shall be created, it is very possible that rules may be established and that there may arise something like a common law upon the subject; but under the action of the Legislature, such action as has been had in this State in times past, I submit that there are no rules, and that this provision, either in the form in which it is now offered by my friend from New York [Mr. Robertson] or in its present form, will be entirely delusive, because it will refer to rules to govern this tribunal, which in fact have no existence; and for this reason I am in favor of striking it out.

Mr. VAN COTT—What is the amendment of the gentleman from Erie [Mr. Verplanck]?

The PRESIDENT *pro tem.*—The amendment pending is the amendment of the gentleman from New York [Mr. Robertson].

Mr. VAN COTT—Will the President please state the amendment of the gentleman from Erie [Mr. Verplanck].

The PRESIDENT *pro tem.*—It is to strike out the word "legal" before the word "rules" in the fourteenth line, and to insert the word "and" after the word "citizens" in line fifteen.

Mr. VAN COTT—It seems to me, sir, that we can escape the difficulty by striking out the whole paragraph which has been criticised.

Mr. VERPLANCK—I made that motion and it was ruled out of order.

The PRESIDENT *pro tem.*—A motion to strike out is not now in order. Propositions to amend must first be disposed of.

Mr. VAN COTT—If the President will allow me to read what I shall ask to have stricken out hereafter, it is this:

"In all other respects such court shall be governed in its adjudications by the legal rules which have heretofore existed between the State and its citizens, according to the course and practice of the common law as modified by the statutes of this State."

I think these words are entirely superfluous and are so vague that they must cause much embarrassment in the attempt to construe and execute them. The whole existing difficulty in respect to a controversy between the State and one of its citizens lies in the fact that the State cannot be sued. It is said that the State, administering justice, cannot be forced to administer justice against itself. That reason would apply just as well to a suit brought by the State as plaintiff against a citizen. The State as plaintiff, administers justice in its own case, and the State as defendant administers justice in its own case; nevertheless that has been given as a reason why the State cannot be sued. Now, sir, what are the rights of the citizen against the State? If

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the State makes a contract it is the right of the citizen to have that contract performed. If the State executes a bond or a note, the holder of that bond or that note exacts of the State the performance of the contract according to the tenor of its obligations. So, if the State inflicts an injury, the remedy of the citizen against the State for the injury, is the recovery of a sum of money that will compensate for it. If the remedy had been open to the citizen in a court in a claim against the State as in a claim against a fellow-citizen, the same rule which governs the case of a citizen against a citizen would govern the case of a citizen against the State. Now, sir, when, by the Constitution, we provide a court of justice, and say that the citizen may come into that court and demand justice against the State, do we not thereby necessarily give to the citizen the law applicable to the case? When we say that the State having made a contract, the citizen may come into court and enforce that contract against the State, is it necessary in the constitutional provision which creates the court to declare also the law by which the case shall be determined? The case is to be determined by the law which enforces the obligation of the contract; and the case for an injury is to be determined by the law which exacts indemnity for the injury. It seems to me, sir, that when we have created the court and authorized the citizen to sue the State, we have done all that is necessary. Every thing beyond that is superfluous, and whatever is superfluous in the Constitution is objectionable, because it tends to create doubts instead of removing them. If the pending amendments (which do not cure but only slightly mitigate the evil) be not adopted, as I hope they will not be, I shall move to strike out this clause altogether.

Mr. WAKEMAN—The remarks of the honorable gentleman from Kings [Mr. Van Cott], have left me in doubt what policy we should pursue here. It may be well to look and see what tribunals now exist by which the rights of the citizen may be determined in a claim against the State. I understand the canal appraisers to be one tribunal, the canal board another and the Legislature another; and I understand too, that a public officer under certain circumstances may be liable to the citizen, and that the State itself is not liable. Now, if this court of claims be established and we establish no rule by which it shall be governed in these cases, the question will then arise whether that court shall not be, as the courts of common law are, governed by the rules as between citizen and citizen. If that is to be the rule to be established, and we desire to establish that rule, very well. It has been said here, that the State cannot be sued by an individual. That is so. Now, do we desire to change that rule. I recollect a few years ago making an application to the Legislature in the case of a poor man who had been injured and maimed for life, by falling through a State bridge at Lockport. The answer of the State, given through the committee of the Senate, was, that the State was not liable in that class of cases, although it was a strong case of equity, in which the report of the Senate committee showed clearly that they would have granted the relief applied for if it had not been contrary to the policy of the State to allow itself to be made liable in that class of cases. Now, do we desire to change that rule? If we do then I have no doubt that the amendment of the gentleman from Kings [Mr. Van Cott], would be a very proper one, but if we desire to retain the same rules between the individual and the State as now exist in the tribunals which have the disposition of these cases, should we not adopt some rule here by which that policy shall be clearly avowed and defined by the Constitution itself? It seems to me that the policy which has led to the creation of this court of claims by the Convention is to do away with all the other tribunals, so that their claims shall come before this one tribunal, and so that claimants if they fail there cannot afterward go to the Legislature and get a law passed allowing their claim the next year, or in ten years after; the object being to relieve the treasury of the State from the burden of these claims and demands against the State which ought never to have been made at all; and should we not therefore preserve the rules that have heretofore existed between the citizens and the State in such cases, that this end may be attained. Now, the proposition of the gentleman from Erie [Mr. Verplanck]—and there is something in that—is to strike out the word "legal," on the ground that there are no legal rules between the citizen and the State. There has been one rule in the Legislature, and another in the canal board, and another before the canal appraisers, and even before each of these tribunals the rule has not been uniform. Still this court could be left to find out what the rule and policy of the State has been, and to apply it, but if we strike out the whole provision the question will then be whether every claim of this sort may not go before the tribunal exactly in the same way that one private citizen would go before a court in a claim against another.

Mr. VAN COTT—Will the gentleman allow me to make a single remark, because what I said may not have been sufficiently guarded, and I do not wish to be misunderstood. I wish to say a word or two by way of explanation.

The PRESIDENT *pro tem.*—The gentleman has spoken once and cannot do so again except by unanimous consent. No objection being made the gentleman will proceed.

Mr. VAN COTT—I merely desired to explain. What I meant to say was this, that the court being established, if it found a constitutional provision applicable to the case it would apply it; or if it found a statute applicable to the case it would apply that; but if it found neither, it would apply such common law or usage as had existed in the State, applicable to the transaction. I did not mean to be understood, as I seem to have been, that the cases would necessarily be governed by the rules that would govern in controversies between citizen and citizen. Where a distinction had been made, which had become a part of the established usage of the State, that becomes a part of the common law governing such transactions as between a citizen and the State, and would be applied in determining the controversy.

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Mr. A. J. PARKER—I cannot agree as to the propriety of the amendment proposed. I think we should adhere to the text before us. Now, for the purpose of properly understanding the meaning of the clause that has led to this discussion, I think we should compare it with that which immediately precedes it. This section authorizes a new kind of evidence to be brought before this tribunal, namely: that which the judges of the court of claims may derive from a personal inspection of the premises in question, where there are lands in question; and it provides not only that they shall view the property, but that they shall consider their own estimate of such value of the damages in connection with the evidence in the case. Thus a new rule of evidence is adopted with reference to this court of claims. Now, I think that what follows shows that it relates mainly to the evidence. It says that "in all other respects such courts shall be governed in its adjudications by the legal rules which have heretofore existed between the State and its citizens, according to the course and practice of the common law as modified by the statutes of this State." In other respects they shall pursue the ordinary rules of evidence in the adjudications before them—not the rules of evidence between citizen and citizen, for that would not be just to the State—but the "rules that have heretofore existed between the State and its citizens." They are to remain as they have been heretofore. It is true that, heretofore, the State could not be sued, because the sovereignty of the State did not admit of its being called into court to defend itself. But heretofore the State has sued, and whenever the State has brought suit against a citizen there have been certain rules of evidence which have governed, different from those which govern between citizen and citizen. For instance, take an action of ejectment brought by the State to recover a lot of wild land to which some citizen makes claim. On the trial of that cause at the circuit, instead of the ordinary rule of evidence, you start with the presumption that the State is the owner of the land, and it is for the defendant to repel that presumption by evidence, if he can do so. A different rule of evidence governs from that which prevails in a suit between citizen and citizen. So in regard to the statute of limitations, which is one of the statutes referred to as having modified the rules of the common law. A different rule is laid down to govern between the State and the citizen from that which governs between citizen and citizen. I take it that the objects of this clause is simply to say that in other respects except this important one in which change has been made, in these adjudications the court shall be governed by the same rules that have governed where a trial has taken place between the people and the citizen in a civil cause. I think it should be so. These rules are well settled—well established. They are not, as my friend from Rensselaer [Mr. M. I. Townsend] would seem to suppose, rules derived from the capricious action of the Legislature in refusing one claim and allowing another. Such legislation makes no rules of evidence or of law for any other case except the one in question and—

Mr. M. I. TOWNSEND—I would ask the gentleman whether there is any reference to the rules of evidence in the clause about which he is now speaking. If it be so, nothing that I said has reference to that. I think it refers to decisions—adjudications.

Mr. A. J. PARKER—I think my friend is in error in supposing that any kind of evidence could be admitted because in some particular case the Legislature considered it. You establish nothing by that. There would be just as much authority under that for the rejection of a claim as there would be for the allowance of it. They are referred to as "legal rules" that exist between citizen and citizen as modified by statute—the general rules, such as the statute of limitations, and such as that other principle of the presumption that applies in such cases. I have only spoken of one or two of these peculiar rules but there are many others, as gentlemen of the Convention must understand.

Mr. KRUM—I would like to ask the gentleman from Albany [Mr. A. J. Parker] if the same rule he now contends for would not exist with the clause under consideration stricken out?

Mr. A. J. PARKER—Perhaps it might; but I think the question would be left open to controversy. I think it is much better that we should lay down the rules, as far as we can, which are to govern the court we are to create.

Mr. MERRITT—In theory we say that the agents of the State are not liable to the citizen but so far as it pertains to claims against the State the practice is that the State is liable, and the State has assumed that liability. I presume to say that there has not a claim passed the Legislature since the adoption of the Constitution of 1846 that that question has not been involved and the allowance made expressly upon the condition that some agent of the State has in some way contributed to the damage, and because the parties cannot go into court and get what they claim as their due, they ask the Legislature to pass bills for their relief. Now, take the question of contracts upon the canals. The State is a party and the contractor is a party. The contract goes on under a contract, and, under some pretext or other during the life of the contract, some additional work is done, or, on some incident growing out of the supervision by the State officer of that work, the contractor claims that the State by its agent has done that damage or contributed to it, and he goes to the Legislature and asks it to legalise a claim which he admits does not exist in law. The Legislature then refers the matter to some board of State officers for adjudication, and these statutes, if you will refer to them, you will see are very adroitly worded for the purpose of giving the greatest latitude to the claimant; and the canal board and canal appraisers regard these acts as mandatory upon them and they make the allowances to the fullest extent authorized. I have one case in my mind where several thousand dollars was allowed upon this express condition for the reason that it was claimed that some work for the State had been done—not immediately connected with the contracted section—and in consequence of which the damage occurred. And if the action in the boards or of the Legislature should be taken as

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precedent, or, as the general rule, you will find that even in the resolution of the canal board there are no principles laid down in allowing a claim at all, but simply a resolution to allow the claimant ten thousand dollars, or whatever the sum may be, either upon written or oral testimony, or upon affidavit, as they in their judgment may think best. I am prepared to admit the liability of the State for the acts of its agent, and adjudicate claims as you would between individuals. I have no doubt the State would save money by it. The theory is one thing, the practice is another. If we admit the justice of claims against the State, we must admit them upon the same principle that we admit the justice of a claim against an individual. And these acts referred to provide that if the boards to which the matter is referred shall find such a state of facts as will allow a claim against a citizen, then the board is authorized or is instructed to allow the claim as against the State. That being the practice, let us adopt it as a principle, and then let the State hold its agent responsible. It is admitted that the claimant has no control over the State officer, and in theory we say the State is not responsible for the acts of its agent; but if its agents do wrong, or if such agent interferes with any of the private rights of citizens, let the State hold the agent responsible, and require the agent, if he has stepped outside of the law, to respond in damages or be punished as may be provided by law. But if, under the direction of the State, or the Legislature, injury should be done to individuals—under the common principle that we shall not take private property or trespass upon private rights for public uses without compensation, let damages be awarded. Let the responsibility come home to the officers who do not do their duty faithfully. Let them bear the whole responsibility. If we constitute the court upon that basis, every body will understand upon what principles their rights are to be adjudicated, and we shall be relieved of bad precedents growing out of wrong action of the Legislature or other authorities, who have passed upon them. I do not claim to have much legal knowledge, yet my opinion is that this paragraph should be stricken out, and I hope it will be, so that the court can establish its own rules and proceedings, like any other court.

Mr. VERPLANCK—When this discussion commenced I moved to amend by striking out the words which the gentleman from Kings [Mr. Van Cott] has indicated he would move to strike out after the pending amendment is disposed of. Those words could do no good and might do harm. The gentleman from Albany [Mr. A. J. Parker] has said that there are certain rules which have obtained in the courts in reference to suits between the State and the citizen. That is true in cases where the State has been the plaintiff in the action. But we are now providing for an entire different class of cases. We are providing for a class of cases where the State is to be sued by the citizen. There is no rule established according to the course of the common law as modified by the statute in any such case, and I therefore moved to strike out the word "legal," so that it might refer to only such rules as had obtained before the Legislature or boards established by the Legislature, where claims were made by citizens against the State, so that the section would refer to those rules instead of "legal" rules. I undertake to say that there are no "legal" rules established by the courts of common law modified by the statutes of the State, and therefore the object which the gentleman from Steuben [Mr. Rumsey], for whose discrimination and legal acumen I have the highest respect, desires to effect will fail. I think that we will attain the end he has in view if the amendment I proposed is adopted. If it is not adopted, when the proper time comes I shall move to strike out the whole section.

Mr. SPENCER—Several years ago the Legislature enacted that certain legal proceedings should be adapted to the comprehension of men of ordinary understanding. [Laughter.] It seems to me that we should adopt the same rule in regard to any provision in the Constitution; or else the gentleman upon my right who says he cannot understand the provision under consideration at all, and the gentleman on my left who says he understands it in a particular way, and the gentleman upon my rear who says he understands it another way; will never be able to agree upon the matter. Now, if we, learned and wise men, endowed with a great deal of legal acumen [laughter], cannot understand this clause, how can it be expected that it will be comprehended by people of common and ordinary understanding.

Mr. SMITH—As we are establishing a new tribunal, it would seem desirable to prescribe some code of rules and practice for it. If none such be prescribed, there may be great difficulty in ascertaining by what rules the tribunal is to be governed in its adjudications. I should, therefore, prefer that some provision be made, but, I confess that I have great difficulty in understanding clearly the scope and meaning of the language employed in this section. It reads thus:

"In all respects such court shall be governed in its adjudications by the legal rules which have heretofore existed between the State and its citizens."

Now, the first difficulty is, what are those rules? As has just been stated by the gentlemen from Steuben [Mr. Spencer], no two persons agree as to what they are; and the judges would be likely to find themselves in the same difficulty. In the second place, it confines the court to the rules and practice heretofore existing, thus stereotyping whatever rules of practice may have been heretofore adopted. If they are good and proper, then it is very well; but if they are not, then they ought to be changed and modified, but they could not be under the provision in question, because it is inflexible. There would be no power to modify them. The last clause in this paragraph, "according to the practice of the common law," may, and probably does, refer to those rules, "as heretofore existing." I would suggest for consideration that the clause be modified so as to read thus: "in all respects such court shall be governed in its adjudications by the rules and practice of the common law as modified by the statutes of this State," leaving out all the rest,

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and simply adopting the rules of the common law for the government of these cases. But it is said that this will not answer, because a different relation exists between the State and the citizen from that existing between citizens. If that be so, the Legislature might make rules applicable to the relation. By the modification which I have suggested, we should provide a general code, namely—the common law rules, leaving it in the power of the Legislature to change and modify them as time and circumstances might render necessary. It seems to me this would relieve the section from all difficulties.

Mr. LAPHAM—The difficulty which arises is principally in not considering the object to be provided in the Constitution. What is the evil which we are seeking to guard against? The practice for many years has been that, when a claim has been decided by the tribunal to which it is referred by law and decided to be unwarranted and unjust, and consequently disallowed, to go to the Legislature and ask its allowance; and we all regret to be compelled to say that the application to the Legislature has generally been successful. To illustrate—the statute provides with great particularity the cases in which the claims for damages shall be entitled to compensation for property taken for public uses. And they provide to some extent the class of cases in which no claim for damages shall be allowed. We have already, in the article relating to the canals, swept away entirely a class of claims which have heretofore been the subject of allowance to individuals, and have provided that no such claims shall hereafter be allowed. Now, in regard to the remaining classes of claims. We constitute a tribunal to determine claims. What is the object of the tribunal? It is to take away from it all exercise of discretionary power—all power to donate public moneys for the State which has been the great evil in the exercise of legislative power. It is to have this tribunal governed in its adjudication by legal rules. We have provided in this section that the determination of this tribunal may be reviewed upon the law by the court of appeals; but it precludes the exercise of any other than legal rules in the determination of the question between the citizen and the State. And there is no difficulty in this provision whatever. The laws are ample to protect the citizen in every enjoyment and in every just claim. To illustrate; a person who has entered into a contract with the State to do a certain piece of public work comes before the tribunal and asks for extra compensation. He is answered, "The court is not authorized, and the State is not liable to pay extra compensation." The object of this is to prevent the party then going to the Legislature and asking it as a matter of bounty in the exercise of a discretionary power by that body. It is to cut off all that; it is to have these claims determined upon the legal rules, and to provide for a review of the determination of the tribunal upon these decisions in case errors are committed. Therefore, the retention of this form of expression, that "the court shall be governed by the legal rules heretofore existing," is absolutely essential to the success of the system. Without it the tribunal might become just as objectionable as a power to determine these matters as the board of canal appraisers, the canal board, or the Legislature in the past.

Mr. COMSTOCK—It seems to me, in listening to the discussion, that we all mean very nearly the same thing. The only question is, what shall be the expression of the common idea? The general intent of this clause, I apprehend, is that the court of claims shall be governed by rules and not by discretion; shall be governed by law, and not by its own sense as to what may be abstract equity, or by caprice. The gentleman from Fulton [Mr. Smith] has very nearly expressed my own idea, in stating that the clause should be in substance that the court shall be governed in its adjudications by the rules and practice of the common law, as modified by the statutes of this State. I should make it a very little shorter perhaps, so that it shall read "shall be governed in its adjudications by the rules of law as modified by the statutes of the State." This court is to have a jurisdiction and exercise a function very much like that of all other courts. If it can find a rule of law applicable to the case, then it would be governed by it. If it cannot find an existing rule applicable to a case before it, like any other court it will make a rule and that will become the precedent for other cases, and will become the rule of law for that court. I object to the particular expression "the legal rules which have heretofore existed in this State," etc., because no man has yet been able to state what those legal rules are between the State and its citizens. They cannot be found and cannot be stated.

Mr. RUMSEY—May I ask the gentleman [Mr. Comstock] whether it has not been one of the rules established, that the State in its sovereign capacity is not liable for any incidental damages resulting from its works of internal improvement?

Mr. COMSTOCK—I do not know how that may be. If so, that may be one of the legal rules. What I mean to say is that there is no system of rules governing between the State and the citizen. You have no code on that subject, and you will find this clause will work inconveniently if you go any further than to say that the court shall be governed by law as modified by the statutes of the State. I think we should not go beyond the most general form of expression. In due time a system of sound and wholesome jurisprudence will grow up in the administration of justice by the proposed court.

Mr. ROBERTSON—Mr. President—

The PRESIDENT *pro tem.*—The gentleman having spoken once and asked questions twice is not in order except by unanimous consent. [Laughter.] No objection being made he can proceed.

Mr. ROBERTSON—I have felt the same difficulty as the gentleman from Essex [Mr. Hale] in regard to laying down any rule as respects the presentation of claims where there was no statute, or law, or practice determining upon what principle claims against the State should be established. When we have consented by this article of the Constitution that the State should descend into the arena of an ordinary litigation in the matter

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of determining the rights of a party against the State, I apprehend that some rule should be adopted in regard to the principle upon which the State should be made liable. As I understand this sentence which is proposed to be amended, it was introduced for the purpose of recognizing the existence and the application of the ordinary rules of law in a contest between the State and a citizen in regard to claims which would exist in regard to a contest between citizens; so that there should be no doubt, when the State comes down into this arena, that it should submit itself to the same rules which govern the rights of private citizens in reference to claims against each other. I acknowledge the force of the suggestion (I suppose it was perceived by members) although perhaps not explained by my friend from Erie [Mr. Verplanck] that this was introducing a new rule rather than new principles, and that as the State had consented to become impleaded as a defendant in an action, there should be some new rule established. It is with that view I suggest that instead of striking out the words "heretofore existing" to put in the words "the rules which have heretofore governed the relations between the State and its citizens," so that it shall be governed by the ordinary rules of law. By this amendment, the State, putting itself within the jurisdiction of the court it had created, would consent to be governed by the rules of law which had been established by the Constitution and by statute.

The question was put on the amendment of Mr. Robertson, and it was declared lost.

Mr. VAN COTT—I think there is force in the suggestion made by the gentleman from Onondaga [Mr. Comstock] distinguishing between the application of rules of law and rules of equity to claims, and that it may be well to guard against the dangers he indicates by express provision. I therefore move to amend by striking out all after the word "govern" down to and including the word "State" in the seventeenth line, and inserting in lieu thereof the words "by the rules of law applicable to such controversies as between the State and its citizens:" so that it will read, "In all other respects such court shall be governed by the rules of law applicable to such controversies as between the State and its citizens."

Mr. VERPLANCK—I accept the amendment.

The PRESIDENT *pro tem.* announced the question on the amendment of Mr. Verplanck as amended on the suggestion of Mr. Van Cott.

Mr. SMITH—I rise to inquire of the gentleman from Kings [Mr. Van Cott] whether his amendment looks to any change that the Legislature may make, or whether he confines it to the rules that now exist?

Mr. VAN COTT—I do not confine it at all. It was made general on purpose. I worded it very carefully so that the courts should be governed by the rules of law applicable to such controversies between the State and its citizens, and in force at the time of the adjudication.

Mr. SMITH—That seems to me to be open to the same objection, in a modified degree, that has been made to the other proposition. It applies to all the rules as they now exist. The difficulty is in ascertaining what the rules are which have been referred to. I like the amendment suggested by the member from Onondaga [Mr. Comstock] which prescribes the rules of law as they exist, subject to modification by the Legislature. In that way a system, uniform, symmetrical, and clear, would grow up in the practice of this new court. It leaves the matter in the hands of the Legislature. It is flexible. But under this amendment the Code would be unchangeable, and, besides, the meaning is not entirely clear. If this amendment do not prevail, I shall offer an amendment such as I have suggested, with the modification proposed by the gentleman from Onondaga [Mr. Comstock], simply leaving it to the rules of law as they may be modified from time to time by the Legislature.

The PRESIDENT *pro tem.* again announced the pending question to be on the amendment offered by Mr. Verplanck as amended by Mr. Van Cott.

Mr. DEVELIN—I move to amend the amendment by inserting in place of the word "State" the word "government," so that it shall read "between the government and its citizens." Mr. President, the reason for the amendment is, that there are no rules governing between the State and its citizens, in regard to these controversies. No court has ever made any rules on that subject. The Legislature has decided this way and that way, at times, in regard to claims against the State, but no rules have ever been established by any court to apply to controversies between the State and its citizens. But the courts of England and the United States have made rules which are applicable in controversies between the government and its citizens. For instance, if a man should put a letter in the post-office with money in it, and it should be lost, and the postmaster should be sued for the loss, it has been decided by the courts of this country as well as in England, that the postmaster is not liable, because he is a governmental officer. That is a rule which would be acted upon as a legal rule, but it is not a rule made in a controversy between the State and its citizens, because the State cannot be sued. It is so in a great many other controversies which I might cite, but which I will not take up the time of the Convention in stating. If the amendment of the gentleman from Kings [Mr. Van Cott] should be adopted, viz.: that the rules should apply that exist in controversies between the State and its citizens, that declaration in the Constitution, in my judgment, would amount to nothing.

Mr. CHESEBRO—I would like to ask whether the government can be sued in a case of the kind mentioned?

Mr. DEVELIN—The officer can be sued.

Mr. CHESEBRO—But you say he could not be made liable.

Mr. DEVELIN—It has been said that the government cannot be made liable.

Mr. CHESEBRO—Then there is no rule.

Mr. DEVELIN—But what we want is a rule.

Mr. M. I. TOWNSEND—My friend from Albany [Mr. A. J. Parker], construed the clause which has been some time under discussion and to which I addressed myself, as referring to the rules of evidence. Now, as the gentleman's

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argument strikes at my construction of this clause, as a lawyer, I certainly ought to be able at least, to conceive of the direction to which the clause tends. I would ask my friend to look for a moment at its language, and I think he will see that it has no reference to the rules of evidence at all, but on the contrary, it is to the rules of decision and adjudication; the principles of adjudication to which this clause alone refers. "In all respects such courts shall be governed," not in respect to the receipt or rejection of evidence, but in its "adjudications," that is, the decisions upon the evidence. This clause was drawn with reference to the decisions of the court, and to them it was directed. But enough upon that subject. I am satisfied with the amendment proposed by the gentleman from Kings [Mr. Van Cott], and accepted by the gentleman from Erie [Mr. Verplanck], that it would answer much better than the clause in its original shape. The difference is this: under the amendment that is now pending before the Convention, the court will have no rule as I understand the effect of this amendment, because I understand there are no rules that control any such cases; but as the sentence stands there is only the pernicious rule which has been adopted by the Legislature, if that has any meaning at all. I think I am not mistaking the rule which has governed the Legislature. It is that when an influential applicant came with a claim, the State was liable for the act of its agent, and when a non-influential person came with a claim, the rule was that the State was not liable; although if the claim grew in the course of time and became of sufficient magnitude where an influential person would take hold of the claim, eventually the State paid it. So that if the clause in the section was to remain as it originally prevailed, the rule that governed the court would be to allow in all cases almost any claim that was set up against the State. A word in answer to my friend from Steuben [Mr. Rumsey]. I protest that it has not been the rule even in the case of just claims where just claims have been presented, for the Legislature of this State to reject claims set up against the State for injuries resulting from the neglect and misconduct of the agents of the State.

Mr. RUMSEY—Will the gentleman allow me to make a suggestion? He has certainly entirely misapprehended the meaning of the words and the intention of the committee, if he supposes that the committee intended to adopt the action of the Legislature as the rule of law to govern this court. If he reflects he will recognize a rule that has existed in all governments, of the non-liability of the government, or State, by whatever name it may be called, for any incidental damage that results from any of the acts authorized by the State, for the purpose of internal improvements. And that is precisely the rule that the committee had in their minds when they adopted the language used in the section.

Mr. M. I. TOWNSEND—Far be it from me to attribute to the committee any intention such as would naturally follow from the language of the clause in the section referred to. I was addressing myself not to what was the intention of the committee, but to what the gentleman from Steuben [Mr. Rumsey] has asserted, in his place on this floor, that the State has not held itself responsible for the default, misconduct or neglect of its agents. Now, sir, within ten miles of this city the canal has been raised over a large portion of its extent; and the State has paid hundreds of thousands of dollars damages, because the canal bed was not properly puddled, by reason of which the water leaked through the banks and destroyed the cellars of residents along the line of the canal. I know that heretofore in this State, the State has, nominally, not held itself liable to individuals for injuries resulting al along the thoroughfares for such objects. But sir, the principle lying close by it has prevailed that, where any of the organized localities of th State has built up public highways for the accom modation of the citizens of those localities in their official capacity, the localities hav been sued for the neglect of their official and agents, and the localities have been mad liable, and it is just, if a locality put an officer i charge of its highways, that officer should s prepare the highway, so it shall not be a man trap or a dead-fall, instead of a proper mode o communication. If he does not, the localit should be made to answer.

Here the gavel fell, the speaker's time havin expired.

Mr. KINNEY—I think there has been suf cient light thrown upon the subject in the r marks that have been made. I therefore mo the previous question.

The question was put on the motion of M Kinney, and it was declared carried.

The question was then put on the adoption of t amendment of Mr. Develin to substitute the wo "government" in place of the word "State and it was declared lost.

The question then recurred on the amendme offered by Mr. Verplanck, as amended on t suggestion of Mr. Van Cott, and it was declar carried.

Mr. GRAVES—I move a reconsideration the vote by which the amendment offered by m self providing for a trial by jury in the propos court, was lost and ask that it lie on the table.

The PRESIDENT *pro tem.*—The motion w lie on the table, under the rule.

The PRESIDENT resumed the chair.

Mr. SMITH—I offer the following amen ment:

Strike out all after the word "governed" line 14, down to and including the word "la in line 16, and insert in lieu thereof the wo "by the rules of law," so that it will read, "In other respects such court shall be governed the rules of law, as modified by the statutes the State." This is the amendment I before s gested, modified as suggested by the gentlem from Onondaga [Mr. Comstock].

Mr. VERPLANCK—I rise to a point of or The motion of the gentleman [Mr. Smith] is strike out what the Convention has just deci to insert. The gentleman, therefore, can c reach his object by moving a reconsideration.

The PRESIDENT—The point of order is taken.

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Mr. CHESEBRO—I move to strike out the whole of the paragraph commencing with the word "in" in line thirteen, down to, and including the word "State," in line seventeen.

The question was put on the motion of Mr. Chesebro to strike out, and it was declared lost.

Mr. RUMSEY—I move to amend by inserting after the word "citizen" the word "and."

There being no objection, the amendment suggested was ordered.

Mr. LIVINGSTON—I move a reconsideration of the vote by which the amendment proposed by me this morning, to strike out after the word "State" in the fourth line down to and including the word "direct" in the fifth line, was lost; and I ask that the motion lie on the table.

The PRESIDENT—The motion will lie on the table under the rule.

Mr. RUMSEY—There has been erased from the fourth line, the word "such." I apprehend that was done under a misapprehension of the necessities of the case. By striking out the word "such," you send every imaginable claim that may exist against the State to the court of claims, which was not the intention at all. There is a very large number of claims for salaries, for the payment of men hired from day to day to labor upon the public works. All these things are provided for annually in the appropriation bills, and there is no earthly use in sending such claims to the court of claims. The object of the clause is to send such contested claims as have heretofore gone to the Legislature for allowance, and to leave these other claims, which are legal, just, and equitable, to be paid on demand. For this reason the word "such" should be reinstated.

Mr. VERPLANCK—Ask unanimous consent.

Mr. RUMSEY—I ask unanimous consent that the word "such" be reinstated in the fourth line.

Mr. MILLER—I would suggest to the gentleman [Mr. Rumsey] that it would be better to insert the word "contested" before the word "claims," so that it will read, "all contested claims." I think that would be better than the word "such," leaving the Legislature to discriminate between claimants.

The PRESIDENT—No objection being made, the amendment suggested will be ordered.

Mr. E. A. BROWN—I object.

The PRESIDENT—Objection being made, the question is on the amendment offered by the gentleman from Steuben [Mr. Rumsey].

Mr. OPDYKE—I rise to a point of order, that the amendment cannot be considered without a motion to reconsider the vote by which the word was stricken out.

The PRESIDENT—The point of order is well taken.

Mr. RUMSEY—I move to reconsider the vote by which the word "such" was stricken out.

Mr. OPDYKE—I object.

The PRESIDENT—Objection being made, the motion will lie on the table, under the rule.

Mr. ALVORD—I move to amend by inserting immediately before the word "claims" in the fourth line, the word "contested."

The question was put on the adoption of the amendment offered by Mr. Alvord, and it was declared carried.

Mr. PROSSER—I move to strike out the word "as," in the fourth line, and insert the word "which."

The question was put on the amendment of Mr. Prosser, and, on a division, it was declared carried, by a vote of 20 ayes, the noes not being counted.

Mr. KRUM—I move a reconsideration of the vote last taken.

Objection being made, the motion was laid on the table under the rule.

Mr. E. A. BROWN—I move a reconsideration of the vote by which the amendment of the gentleman from Onondaga [Mr. Alvord], inserting the word "contested," before the word "claims," was adopted.

Objection being made, the motion was laid on the table, under the rule.

Mr. SMITH—I move a reconsideration of the vote by which the amendment offered by the gentleman from Erie [Mr. Verplanck] was adopted.

Objection being made, the motion was laid on the table under the rule.

There being no further amendment offered to the section, the SECRETARY read the next section, as follows:

SEC. 11. There shall be a solicitor of claims, to be appointed in the same manner as the judges of the court of claims, whose duty it shall be to take charge of the interests of the State in all matters depending before the court of claims. Such solicitor may be removed by the Governor for incompetency or neglect of duty, upon the recommendation of said court, and whenever, in the judgment of the Legislature, the office of solicitor of claims shall be or become unnecessary, they may abolish the same by law.

Mr. CHESEBRO—I move as a substitute for that section the following:

SEC. 11. It shall be the duty of the Attorney-General to take charge of the interests of the State in all matters depending before the court of claims.

It will be remembered that when we were in Committee of the Whole on this article, the question as to the appointment of the Attorney-General, or directing him to take charge of the claims before this court, was the subject-matter of discussion; and I do not propose to recapitulate it, or to open the argument again, so far as I am concerned. But, sir, since that discussion, the Attorney-General of the State then in office has yielded that office to another officer who is not incumbered with any of the positions which rendered the discharge of that duty before this court at that time a burden; and it seems to me that it is eminently proper, that, the Attorney-General of the State now, who has no other office but that of Attorney-General, should perform for the State this duty. I trust, therefore, this amendment will be adopted.

Mr. VERPLANCK—When this section was before the Committee of the Whole, I was in favor of the amendment now moved by the gentleman from Ontario [Mr. Chesebro], and proposed a resolution providing for a deputy, whose business it should be, under the direction of the Attorney-

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General, to attend to the interests of the State before this court. The matter was so fully discussed at that time, and the vote was so decided upon the subject, that I think further discussion is unnecessary, and I therefore move the previous question on this amendment.

The question was put on the motion of Mr. Verplanck, and it was declared carried.

The question recurred on the amendment of Mr. Chesebro.

Mr. CHESEBRO—I ask the ayes and noes.

A sufficient number not seconding the call, the ayes and noes were not ordered.

The question was put on the amendment of Mr. Chesebro, and it was declared lost.

Mr. VEEDER—I observe in reading over this section that there is no term of office fixed at all for the solicitor. He is appointed in the same manner as the judges but he shall hold office under this section, indefinitely and can only be removed for incompetency or neglect of duty. I, therefore, move to amend by inserting after the word "manner," in line two, the words "and whose term term of office shall be for the same period." So that it shall read as follows:

"There shall be a solicitor of claims, to be appointed in the same manner and whose term of office shall be for the same period as the judges of the court of claims."

I do not think there is any term of office provided for, and I think there ought to be.

Mr. RUMSEY—The gentleman from Kings [Mr. Veeder] has evidently overlooked the latter clause of this section, that the Legislature may, at its pleasure, abolish this office, and also that he may be removed at any time for incompetency on the recommendation of the court. There are abundant facilities for getting rid of this officer at any time when it is necessary to do so, and there is a very strong reason why that officer, when he is once appointed, if he is a faithful man, should be kept there as long as the duties of the office are to be performed by any body.

Mr. VEEDER—Is there any reason why the solicitor should hold his office for any longer period than the judges of that court?

Mr. RUMSEY—Yes, sir; for the simple reason that it requires a great deal of experience and familiarity with all sorts of rules and regulations and claims that have heretofore been made against the State, arising out of an innumerable number of causes. The officer cannot, without a great deal of time spent, furnish himself with a knowledge of all these various claims; and when he has obtained that knowledge, it is a fund of information that will be invaluable to the State; and for that reason he should be retained in office.

Mr. LIVINGSTON—Will the gentleman allow me a question? I want to know whether the judges will not require the experience that is so necessary to the solicitor?

Mr. RUMSEY—No, sir. Their action is controlled by settled rules, and there is no difficulty in learning what those are; while the other depends upon the knowledge of a large number of facts relating to all these various matters.

Mr. VEEDER—I wish to reply to the gentleman who supposes that I have overlooked the balance of the section. That only provides that the Legislature when they deem the office unnecessary may abolish it; but it may run on for twenty years or twenty-five years or even longer. They may perhaps never deem it necessary to abolish that office. Thus there is no term of office established at all. I repeat that I think there ought to be a term of office established for the solicitor just as much as for the judges.

Mr. CHESEBRO—I trust this amendment will be adopted. I have not learned from the distinguished chairman of this committee, who reported this article, any reason assigned which, in my judgment, should prevail in this Convention for continuing this officer beyond the time that the Legislature may abolish this court entirely. What is this officer to be, and what possible use is he to be to the State after the court before which he is appointed as special solicitor has expired?

Mr. DEVELIN—Following the suggestion of the gentleman from Steuben [Mr. Rumsey] I would move as an amendment to the amendment of the gentleman from Kings [Mr. Veeder], that he shall hold office until the claims with which he has familiarized himself have been adjudicated. [Laughter.]

The question was put on the amendment offerred by Mr. Develin, and it was declared lost.

The question recurred and was put on the amendment offered by Mr. Veeder, and it was declared carried.

Mr. VAN CAMPEN—I move to amend by inserting after the word "claims" in the fourth line the following: "And he shall receive for his services a compensation to be established by law." There is no provision made in this section for the compensation of the solicitor; and, regarding this as an oversight, I offer this amendment.

The question was put on the amendment offered by Mr. Van Campen, and it was declared carried.

Mr. ALVORD—In the eighth line I do not see the necessity of the words "or become." I move that they be stricken out. "Be," or "become" necessary, must of necessity mean the same thing.

The question was put on the motion of Mr. Alvord to strike out, and it was declared carried.

Mr. LAPHAM—I ask permission to offer an amendment to the tenth section, to increase the term of office from five to eight years. We have provided that the county courts—

The PRESIDENT—The tenth section having been passed, the amendment will be in order under the head of amendments generally.

Mr. DEVELIN — I move to strike out the words in the fifth and sixth lines "for incompetency or neglect of duty." I think the solicitor ought to be removed at any time the court thinks he ought to be removed, without referring to any particular cause of removal. I would have it read, "such solicitor may be removed by the Governor, upon the recommendation of said court," without inserting any specific reasons in the Constitution. The court may have causes for his removal not being of incompetency or neglect of duty—for removal because under incompetency or neglect of duty it is doubtful whether bribery of the solicitor would be included

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or other circumstances of which the court might be aware, for which they might think the solicitor ought to be removed—reasons personally arising perhaps from the habits of the solicitor himself, or affecting his family, or connections, and yet they might be unable to report to the Governor that he was incompetent, or had been guilty of neglect of duty, and out of respect to feelings of others unwilling to report the real cause, at the same time thinking he was not a proper officer to defend the claims against the State. It should be left to the court to recommend to the Governor to remove the solicitor for such cause as they might think sufficient. Therefore, I move to amend, and would make it the duty of the Governor, on the recommendation of the court, to remove the solicitor.

Mr. HALE—I move to amend by inserting before the word "incompetency," in the fifth line, the words "malfeasance in office," so that it shall read, "may be removed by the Governor for malfeasance in office, incompetency or neglect of duty." The section as it now stands authorizes his removal only for neglect or for incompetency, and not for malfeasance.

Mr. DEVELIN—Every gentleman of this Convention must feel—

Mr. HALE—At the suggestion of the gentleman from Ontario [Mr. Lapham], I would use the word "misconduct" in place of "malfeasance."

Mr. DEVELIN—I am satisfied with that amendment.

The question was put on the amendment of Mr. Develin, as modified by the acceptance of the amendment of Mr. Hale, and it was declared carried.

Mr. CHESEBRO—If there are no further amendments proposed to the section, I now move to strike it out. It seems to me that this Convention is going a little out of its way in creating an officer here who is to supersede the law officer of the State in the discharge of this duty. The State now employs, by an election by the people, an Attorney-General, whose general duty it is to take care of the interests of the State in all matters of claims against the State of every description. If this section, therefore, be stricken out entirely, the Attorney-General would, by virtue of his office, be required to take care of the interests of the State before this court. Now, what possible object is there in creating this officer, except to confer upon some favored individual an office whose duties really ought to be discharged by the regular law officer of the State?

Mr. KETCHAM—I would like to ask the gentleman a question. Did he ever know a case in which the Attorney-General attended in behalf of the State before the canal appraisers either himself or by any other person whom he provided? I venture to say there never was a case of the kind in the world.

Mr. CHESEBRO—I cannot say whether there ever was a case of that kind or not. I have no experience in that matter. If it is true, as the gentleman from Wayne [Mr. Ketcham] states, that the law officer of the State never did take care of the interests of the State, it is time we had a change in that office, and I am glad we have a man there who I believe will do it.

Mr. ALVORD—Will the gentleman allow me a question? Is he aware of any Attorney-General, whether of his own particular political stripe or not, that ever did attend a court of claims?

Mr. CHESEBRO—I never knew of any court of claims in this State before this. It is now proposed to constitutionalize one. I propose to have the Attorney-General of the State take care of the interests of the State before that court. There never has been any court of claims before in this State, and if the Attorney-General has not taken care of these claims before the canal board or the canal appraisers, it is because he has not had the authority under some particular law, to appoint somebody to take care of those interests before that court. But here is a regularly organized tribunal, to consist of three judges, who are to have all the power of any common law court in this State. It is to be a regular court, and I suppose it will have its regular sessions. The State now has a law officer, whose duty it is to take care of the interests of the State in all matters of claims against it. It will be remembered that, when we discussed this matter in Committee of the Whole, a gentleman who is a member of the canal board, or of the canal appraisers [Mr. E. P. Brooks], who is not now here, was appealed to by the committee to state how long a time it would take, in his opinion, as a member of that body, to dispose of all existing claims against the State, arising from canal damages; and he stated that it would take about two years in his opinion to dispose of the present volume of cases before that tribunal. Now, here we are to create an office with a term unlimited in the Constitution, although there will not be before that court, in two years from that time, according to the estimate made by him, claims against the State which will occupy the attention of that court for any considerable length of time. I submit that there will arise necessarily between the Attorney-General of the State who is the law officer of the State, to protect it, and this solicitor, a conflict of jurisdiction which is incompatible with the office. I submit, therefore, inasmuch as, if we strike out this section entirely, it will be the duty of the Attorney-General to take care of the interests of the State before this court, as well as before any other court, that it should be stricken out.

Mr. ALVORD—The gentleman from Ontario [Mr. Chesebro] has made three or four mistakes in the course of his remarks here, in regard to which I propose to set him right. In the first place, we have altered this section so as to make the solicitor a five years' officer instead of a perpetual officer, by vote of this Convention. Again, under the laws of the State, the canal board are made, to a very considerable extent, to have the original jurisdiction over claims, and are the appellate court, from the canal appraisers, and the Attorney-General, by a law of the State, is one of that court, sitting as a judge and not as an advocate. It never has happened, in the history of this State, that any Attorney-General, no matter who he was, has been bound, under the law, to act as advocate of the State before the court of claims, the canal appraisers at the same time that he is to act upon any claim coming before that court as one of the judges of appeals in the case.

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And it is an impossibility, so far as regards this court of claims, in respect to the business it now has on hand, for an Attorney-General to attend to the duties devolving upon the solicitor here in this section, and do any thing else. The Attorney-General is an officer of the State not in the capacity that it is necessary for him to act as solicitor in regard to claims against the State, before the court of claims or the canal appraisers. This is the law—this practice, rather—that in some instances upon a division of the canal where land has been appropriated by the State for the purposes of the canal, and they have sought for damages at the hands of the canal appraisers, that the canal commissioners have employed some local attorney for the purpose of standing by and supporting the interests of the State. In regard to these claims he is authorized to do so by law; but in no case in the history of this State has the Attorney-General undertaken to go before the court of claims or the canal appraisers for the purpose of defending the rights of the State in the matter; and he cannot, in my opinion it would be an impossibility for him to do such a thing except he did it at the expense of the entire of the rest of the duties which are devolved upon him by the statute and the Constitution.

Mr. CHESEBRO—May I be allowed to ask the gentleman a question?

The PRESIDENT—If there be no objection, the gentleman may propound his inquiry.

Mr. CHESEBRO—The gentleman knows, I suppose, that the Attorney-General has the power to employ, and does employ, an assistant attorney-general, at a salary, who can discharge this duty as well as the Attorney-General himself.

Mr. ALVORD—I will answer the gentleman in this particular. The assistant of the Attorney-General is almost entirely confined to the office—necessarily confined by the immense amount of duty that devolves upon him in that position, and very seldom, if ever, in this State, does he undertake to appear in court.

The question was put on the motion of Mr. Chesebro to strike out, and it was declared lost.

Mr. GRAVES—I would like to have this section read as amended, before we pass.

The section was read as amended, and no further amendment being offered, the SECRETARY commenced to read the next section.

Mr. KRUM—I would like to suggest to the gentleman from Kings [Mr. Veeder] if this language would not meet the idea—

The PRESIDENT—The Chair would inform the gentleman from Schoharie [Mr. Krum] that this section has been passed.

Mr. VEEDER—If there is any change required, the Committee on Revision can do that.

Mr. KETCHAM—I move that the Convention do now adjourn.

The question was put on the motion of Mr Ketcham, and it was declared lost.

The SECRETARY then proceeded to read section 12, as follows:

SEC. 12. The Legislature shall not grant any extra compensation to any public officer, servant, agent or contractor after the service shall have been rendered, or the contract entered into, nor increase or diminish the compensation of any public officer, agent, contractor or servant, except judicial officers, during his time of service.

Mr. MORRIS—I move to strike out the words in the fourth line "increase or."

Mr. ALVORD—I would like to have the gentleman give some reasons why he would strike out "increase or." That is the entire gist of the whole section. It is that they shall not increase the compensation of any public officer, agent, contractor, or servant, except judicial officers. The amendment goes directly against the entire meaning of the section, which provides that the Legislature shall not undertake to interfere with a contract after it is once entered into and agreed to. I trust that the gentleman will withdraw his amendment, or that the Convention will vote it down.

Mr. MORRIS—I am opposed, under any circumstances, to the diminution of salaries of officers, after they have once taken their position. I do not object to having compensations diminished, to take place after incumbents vacate their office.

The question was put on the amendment offered by Mr. Morris, and it was declared lost.

Mr. DEVELIN—I move to strike out the words in the fifth line, "except judicial officers." In the Constitution of 1846 it was expressly declared that no change should be made in the compensation of judicial officers. There is no more dangerous proposition than to give to the Legislature the power to increase the compensation of those who shall define the meaning of the laws that are passed by it. All men are weak, and all men are subject to influences of money. All men are subject to the influences of an increased compensation; and when it comes up in high political times that judicial officers are to decide what is the meaning of a law that may affect the politics of the State or the interests of the gentlemen who are high in office in the State, and a bait is held out to them that if a decision is made this way or that way, their compensation may be increased, it will have a strong influence upon their views of the law and its construction, and I think it is a dangerous provision to put in the organic law, that the Legislature may increase, as it pleases, the compensation of the judicial officers of the State.

Mr. ALVORD—I am very sorry, indeed, that the gentleman from New York [Mr. Develin] has not given us the benefit of his wisdom and experience in this matter during the term in which we have held this Convention until now. We have with almost entire unanimity in the judicial article, fixed it so that it will leave it to the discretion of the Legislature to increase the salaries of judicial officers, and I will state to the gentleman that the simple reason which presented itself to the Convention was this, that our judicial officers are elected at stated terms, and that a court may commence to-day with one set of officers and a very small portion of them may be in existence as a part of the court in some years when other officers come in; and we have found the condition of things in the past to be this: that officers were sitting upon the bench of the supreme court

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of this State with a salary of some one thousand or fifteen hundred dollars a year less than their colleagues sitting right along side of them. It was for the purpose of meeting such exigencies that the Convention, with almost entire unanimity, have refused to insert this provision, so far as regards this matter, in the judicial article.

Mr. DEVELIN—Mr. President—

The PRESIDENT—The gentleman has once spoken, but can speak again if there be no objection.

Objection was made.

Mr. LAPHAM—I would suggest also that in the tenth section this Convention has just passed upon this very question, by retaining the power to increase by striking out those words in that section in regard to the officers provided for there.

Mr. DEVELIN—I withdraw the amendment.

Mr. HITCHCOCK—I move to strike out the words "public officers." I do not object to the previous part of that section; but I cannot see any good reason why other public officers, aside from agents, should not be placed upon the same basis with judicial officers. It smells a little too strong of the lawyer to allow no one to be benefited except judicial officers.

Mr. ALVORD—I hope that the amendment will not prevail. Very many of the public officers in this State are brought in direct contact with the Legislature, and they control, to a very considerable extent, in their opinions and views upon various subjects of legislation, local and individual as well as general and public legislation, and they should not be placed in a position by means of which they can use their power and influence in certain directions with the hope of getting a reward by the increase of their salaries. Their terms are very much shorter than those of judges. And I would also state another thing. We have placed in this Constitution a provision which is inflexible in reference to the amount which shall be paid to the members of the Legislature, and they are public officers. I trust that there is no sort of comparison, so far as judicial officers are concerned, with other public officers.

The question was then put on the adoption of the amendment offered by Mr. Hitchcock, and it was declared lost.

Mr. OPDYKE—I move to amend by inserting after the word "not," in the first line, "nor shall the common council of any city." I see no objection to inserting this here; but if it be deemed incongruous—

The PRESIDENT—The Chair does not think it germane to the subject-matter.

There being no further amendment offered to this section, the SECRETARY read the next section as follows:

SEC. 13. The Legislature may declare the cases in which any office shall be deemed vacant when no provision is made for that purpose in this Constitution, and shall provide for filling vacancies in office; and in cases of elective offices, any person appointed to fill a vacancy shall hold the office till a successor shall be chosen at the ensuing election and duly qualified according to law.

Mr. LAPHAM—I propose to strike out in the sixth line the words "at the ensuing election." As judicial, officers are chosen only once in two years, it may be regarded as changing the tenure of office and making a different period from that provided by the law. Those words are entirely unnecessary to effect the object of the section. The provision that the incumbent shall hold until his successor shall be chosen, and duly qualified according to law, is all that is necessary.

The question being put on the adoption of the amendment offered by Mr. Lapham, it was declared carried.

There being no further amendment offered to this section, the SECRETARY read the next section as follows:

SEC. 14. Provision shall be made by law for the removal, for misconduct or malversation in office, of all officers (except judicial), whose powers and duties are not local or legislative, and who shall be elected at general elections, and also for supplying vacancies created by such removal.

There being no amendments offered to this section, the SECRETARY read the next section, as follows:

SEC. 15. When the duration of the term of any office is not provided for by this Constitution, it may be declared by law, and if not so declared such office shall be held during the pleasure of the authority making the appointment.

There being no amendment offered to this section, the SECRETARY read the next section, as follows:

SEC. 16. The political year and Legislative term shall commence on the first day of January.

Mr. HALE—I think, under the present Constitution, the legislative term commences on the first Tuesday of January. I would suggest as an amendment—

Mr. E. BROOKS—It is the first Tuesday in January after the first Monday.

Mr. VERPLANCK—That is the time the Legislature meets. Their office commences on the first of January.

Mr. ALVORD—This conforms to the language of our present Constitution.

Mr. HALE — I withdraw my amendment then.

There being no further amendment offered to this section, the SECRETARY read the next section as follows:

SEC. 17. No street railroad shall hereafter be constructed or operated within any of the cities or incorporated villages of this State, until the consent of the local authorities of such village or city shall be first obtained for that purpose, and also the consent of the owners of at least one-half in value of the property, as fixed by the assessment roll of the previous year, on that portion of each street through or over which the same shall be constructed, be previously had and obtained for that purpose; or in case the consent of such property owners be not obtained, then with the consent of the general term of the supreme court of the district in which such road shall be located to be first obtained; such consent to be first obtained and authenticated in such manner as the Legislature shall by general law for that purpose provide. The franchise allowing such railroad to be operated, when the same shall be wholly or principally operated within the

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limits of any city or incorporated village, shall be sold at public auction to the bidder who will build and operate said road at the lowest fare, which fare shall never be increased, after three months' public notice, describing the route of such railroad, in the State paper, and in such newspapers in the city or village where said railroad shall be located as the Legislature shall direct.

Mr. MORRIS—I move to strike out commencing in the ninth line at the words, "or in case the consent," down to the word "obtained" in the twelfth line. My object in offering this amendment is to remove serious obstructions which might be placed in the way of public improvements. It is well known that people along the line of railroads generally object to their construction; some because they think it will diminish the value of their property; some for the purpose of being bought out at exorbitant prices. There is no reason why rails for horse-cars may not be laid through streets with the same facility as railroads where steam-cars are used. Railroad companies running steam-cars have the right to select any route they may choose: they may go through any part of any town or any farm or country seat—the public are to be obliged and not the individuals residing along the line of such railroad. In the case of horse-cars, a much larger number of persons travel daily over the same line than in cars which are propelled by steam; and, therefore, a much larger number of the public are to be consulted and obliged. It is probable that forty millions of passengers are carried daily by the horse cars of New York and its vicinity. The section, as it now stands, makes unnecessary difficulties and delays, and impedes public improvement. If the motion proposed is adopted, the owners of property in cities and villages will be sufficiently protected, and the objects which we desire to accomplish will be best attained.

Mr. ALVORD—I move that this Convention do now adjourn.

The question was put on the motion of Mr. Alvord, and it was declared carried.

So the Convention adjourned.

FRIDAY, January 17, 1868.

The Convention met at ten o'clock A. M., pursuant to adjournment.

Prayer was offered by Rev. Dr. SMILES.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. HADLEY—I ask leave of absence for Mr. Lapham, for the reason that he is sole counsel in an important case which is noticed for trial next week. He, therefore, desires leave of absence indefinitely until that case can be tried.

Mr. S. TOWNSEND—I rise to object, and I take the liberty of saying why I object. I am willing to assent to such a request for a sufficient reason given—

The PRESIDENT—The question is, "Shall leave of absence be granted?" It is not a matter for discussion.

Mr. S. TOWNSEND—I am not going to discuss it; I was simply going to say that I would be very happy to grant leave of absence to any member of this Convention, when necessary, in a case of sickness, for instance, or any of the other cases of necessity that might arise; but where the reason given is a mere matter of business, I am not willing to grant leave of absence, because I suppose half the members of this Convention have equally good reasons of that character for being absent, with the gentleman for whom leave of absence has just been asked. I have already said here, and I repeat now, that gentlemen should have considered the matter well before they accepted the responsibilities and honors, to say nothing of the emoluments [laughter] of this position. In all the localities from which gentlemen have been sent here, there were other individuals ready to take the place and perform its duties, and members having accepted the responsibilities and duties of the position, should give them the precedence of all private business.

Mr. HADLEY—Few members of the Convention have been more regular in their attendance here than the gentleman for whom I have asked leave of absence now. He has already stayed away from circuit after circuit to attend on the deliberations of this Convention; but here is a case where my friend is sole counsel, and involving fifty or sixty thousand dollars; a case which has already been three times tried, and which is noticed again by the opposite party for a fourth trial. Now, the question is, will the Convention deny him leave of absence under such circumstances?

Mr. S. TOWNSEND—The question is, "Shall the Convention give way; or shall the gentleman's case give way?" [Laughter.]

The question was put on the motion of Mr. Hadley, to grant leave of absence to Mr. Lapham, and it was declared carried.

Mr. CHESEBRO—As Mr. Lapham has been granted leave of absence to attend the trial of a cause, and as he has served on me a subpœna to attend as a witness in the supreme court, I now ask leave of absence for that purpose. [Laughter.]

Mr. ALVORD—I must object, for the reason that the gentleman from Ontario [Mr. Chesebro] is not bound, under the law, to attend in response to the subpœna.

Mr. CHESEBRO—I would like to know why?

Mr. ALVORD—As a matter of privilege.

The question was put upon granting Mr. Chesebro leave of absence, and it was declared lost.

Mr. CHESEBRO—I hope the Convention will call upon the supreme court to excuse me for non-attendance upon this subpœna.

Mr. COMSTOCK—If we keep the gentleman here, I think the case will probably go over on account of his absence, and then Mr Lapham will return. [Laughter.]

Mr. BAKER—I ask leave of absence for myself for to-morrow and Monday, in consequence of being subpœnaed to attend as a witness in court.

Mr. CHESEBRO—I object, of course.

The question was put on granting leave of absence to Mr. Baker, and it was declared lost

Mr. FERRY offered the following resolution:

Resolved, That from this time, henceforth, fifty members shall constitute a working quorum, for the transaction of the ordinary business of the

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Convention, provided, however, that its work as finally prepared for submission to the people shall be adopted by a majority of all the members elected.

Resolved, That hereafter upon the assembling of the Convention each day, after the reading of the Journal, the roll of members shall be called, and no member who shall be absent therefrom, shall receive pay for that day, and in case an adjournment shall afterward take place, at any time during that day, by reason of the want of a working quorum, the members absent at the time of such adjournment shall likewise be denied pay.

Mr. VERPLANCK—Mr. President—

The PRESIDENT—The gentleman rising to debate this resolution, it lies on the table under the rule.

The PRESIDENT announced the special order of the day to be the consideration of the report of the Committee of the Whole, upon the report of the Standing Committee on the Powers and Duties of the Legislature; the seventeenth section being under consideration, and the question being upon the amendment proposed by Mr. Morris, to strike out from the seventeenth section all after the word "purpose," in the fourth line, down to, and including the word "obtained" in the twelfth line.

The question was put on the amendment of Mr. Morris, and it was declared lost.

Mr. VERPLANCK—I move, sir, to strike out from this section all after the word "provide," in the fourteenth line. The design on the part of the committee who reported this article was to prevent favoritism in the city of New York in reference to franchises for street railroads, and it is provided by this part of the article that when the necessary consent for the construction of the road is obtained, the sale of the franchise should be offered at a public auction on three months' notice, and sold to the bidder who would build and operate the road for the lowest rate of fare. I would like to ask the chairman of that committee what would be the result if there should be two bidders bidding the same amount? In that case there would be no lowest bidder. Suppose a person living upon the line of this road and opposed to it, after practical men, who had estimated for what rate of fare the road could be built and operated had put in their bids, say at five cents fare, should bid three cents. The contract would be struck off to him as the lowest bidder, and after two or three months had elapsed, and it was ascertained that he had no intention whatever to build the road, it must be advertised and again sold; and this process might be repeated, and so the construction of the road defeated. While I would be entirely willing to have the work go to the person who would build and run the road at the lowest rate of fare, I certainly would not leave it in a position where the whole project could be defeated in this way by any one who was opposed to the road.

Mr. RUMSEY—Will the gentleman from Erie [Mr. Verplanck] give way for a moment?

Mr. VERPLANCK—With a great deal of pleasure.

Mr. RUMSEY—If he will look at the original report in this case, he will find that this section, as it now stands, is not the section reported by the committee at all. They reported simply a provision that the franchises should be sold at public auction, and that the whole avails of such sale should belong to the city or town in which the road was located.

Mr. VERPLANCK—I am happy to hear the explanation of the gentleman, because with the great ability which characterizes the report of this committee, I was surprised in reading this report to notice this feature of it. I now remember that I was present at the debate on this subject in Committee of the Whole, and I recollect that the article as it now stands was the work of that committee. The design on the part of the Committee on the Powers and Duties of the Legislature, was to benefit the public by selling the franchises at public auction for the benefit of the city or village in which the road was located, but if sold in the manner now proposed it was claimed in Committee of the Whole that the persons residing on the line of the road would get the benefit. It will be seen that no road can possibly be constructed under this section if there is any wish to prevent it. The Legislature, under this section, have not the power to secure the building of a road.

Mr. ALVORD—I have been inclined to believe, sir, that in all cases these franchises should be disposed of in a way to benefit the community, and that, in most of these instances, particularly in our large cities, a railroad franchise is worth a great deal more than the mere cost of laying down the track and fitting it for public use, and I would rather amend this provision so that the franchises may be sold to the highest bidder, and the money arising therefrom go to the benefit of the community, than to strike it all out.

Mr. RUMSEY—I would say to the gentleman from Onondaga [Mr. Alvord] that he will attain his object if he will make a motion that we strike out the report of the committee disagreeing with the original section.

Mr. ALVORD—Then I move to so amend the section as to restore this portion of it in the form reported originally by the committee reporting the article. In connection with this matter I desire to say that it has been contended, and I do not know that it has ever been controverted so far as regards the city of New York, that there are none of those franchises but what are worth a very large amount of money. I know that in some instances responsible parties have been in attendance upon the Legislature, and have pledged themselves upon paper over their own signatures to pay into the city treasury for the privilege of constructing a road upon Broadway, two millions of dollars. Now, sir, if these franchises are worth so much money, and if exclusive privileges are granted to parties who enjoy these franchises, it would be well that they should be paid for. I am aware of the fact that the article in regard to this matter, leaving it in the shape in which it is now, goes upon the assumption that the larger portion of those who use these roads are among the poor of the community, and that the benefit immediately accruing to them by permitting these franchises to be sold to persons who would build

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the roads and run them for the lowest rates of fare would be greater than in any other way; but I am rather doubtful myself whether alms should be given in this way. I am inclined to believe that a fair price should be put upon the transportation of passengers, and that any benefit or advantage arising from the sale of these franchises should accrue to the locality for the general benefit of the tax payers: and with that view of the case, when this matter was up in Committee of the Whole, I voted in that direction against the present proposition, and I trust that upon reflection the Convention will come to the conclusion that the course I have indicated is the wisest that can be taken.

Mr. LAPHAM—I am in favor or this substitution proposed by the gentleman from Onondaga [Mr. Alvord], and I will state one reason which is controlling in my mind on the subject. To allow the franchises to be disposed of in the manner provided in the section as it has been reported from the Committee of the Whole would lead necessarily to this result: combinations of persons interested might make an arrangement by which they would bid off the franchises for the road at a price double the actual cost of operating it, precisely in the same manner in which combinations to let contracts to the lowest bidder have resulted in that way. The matter would be entirely beyond the control of the Legislature. Now, I desire to have these roads subject at all times, with reference to their rates of fare, to legislation, so that they can have remunerative prices only, and that they will not be put in a condition where, by abusing their trust, they can get prices grossly above the line of maximum of a reasonable remuneration. There is another reason why I favor this substitution, and it is that all advantage to these particular parties growing out of the exercise of these franchises is a disadvantage to some extent individually, to the citizens of the localities; and therefore whatever can be realized from the sale of these franchises should be given for the local benefit of the city in which they are located.

Mr. REYNOLDS—I was about to move an amendment, that these franchises shall be sold to the highest bidder, and for the shortest number of years. In our new cities these franchises may, and probably will, increase greatly in value as time rolls on, and the franchises sold now will be worth, twenty or fifty years from now, at least three or four times as much as they are at present. I therefore propose the amendment I have indicated.

The PRESIDENT—The amendment must be an amendment to that offered by the gentleman from Onondaga [Mr. Alvord] in order to be received at this stage.

Mr. REYNOLDS—I have in my hand the original section, as it was reported by the committee, and I propose to insert after the word "figure," the words "and for the shortest period of time."

Mr. E. BROOKS—There is unquestionably justice in the amendment which the gentleman has suggested, but I think some definite time ought to be named in the amendment, say ten or twenty years, at the end of which these franchises should be sold. Otherwise the proposition would prevent the accomplishment of what is desired by inducing people rather not to bid than to bid.

Mr. REYNOLDS—I want to leave the whole question open to the bidders to let them bid for the highest price and the shortest period of time.

Mr. E. BROOKS—I do not think that really means any thing. It is so indefinite in its statement as to accomplish no practical result. I should say that the franchises should be sold for at least twenty years. Then when a party makes a bid for a railroad franchise he knows what he is about, and how long the benefit is to accrue to him. While I am on the floor I wish to express the hope that the amendment of the gentleman from Onondaga [Mr. Alvord] will be adopted instead of the proposition now before the Convention. I will give a single reason drawn from my own experience, why a proposition like this ought to be adopted. As I have said before in this Convention, I was made the organ in the State Senate of offering two millions of dollars, the money to be placed in the city treasury of the city of New York, for the right to make a railroad on Broadway, or parallel with Broadway. Yet such was the influence in the Legislature of interested parties that the proposition failed to be accepted, and the Legislature was afterward content to make such a grant without getting a single cent from the city in return for that great franchise. Now, every gentleman knows that the laying of roads on streets in large cities, is, to a certain extent, a great obstruction in the way of the common intercourse and traffic on the streets, and I think it is plainly the right, either that those who have the benefits of such a franchise should keep the streets in repair—I mean the whole street—or that they should pay some considerable amount into the city treasury in return for the benefits they receive. If these franchises can be disposed of at public auction, I have no doubt that the result will be a very large diminution of taxes, and that in this way great benefits will be conferred upon the public.

Mr. M. I. TOWNSEND—I participated in the discussion which led to the change which was made in this section in Committee of the Whole and it seems to me undesirable to occupy the time of the Convention now with any further discussion upon the subject. But I do not agree with the suggestions that have been made here tending to justify the change proposed in this section. I look upon such railroads, street railroads, in a light entirely different from that in which they are viewed by the gentlemen who have spoken here upon that subject. I look upon these roads as a great boon to every class in the community instead of being a boon merely to the stock-holders. I know it is not the design, but to read the article as it was originally reported, and as it will stand if this amendment shall be adopted, one would think that it was the design of the Convention to obstruct in every possible way the construction of any more street railroads in the cities of this State, and that street railroads were, in the language of the books in regard to a certain class of animals, *ferœ naturæ*, and that it was the duty of every good man to wage war to the death with each and all of them.

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Now, sir, I undertake to say that street railroads, instead of being subjects that it is the business of the Convention to fight and destroy, are institutions that it is the duty of every good citizen of the State to foster and endeavor to multiply in number.

Mr. VERPLANCK—Will the gentleman allow me to ask him a question?

Mr. M. I. TOWNSEND—Certainly.

Mr. VERPLANCK—I would ask the gentleman, as I have asked the Convention, whether the provision now in this article will not prevent the construction of any street railroads?

Mr. M. I. TOWNSEND—I answer that it will not do so as fully as this proposed amendment would. Will the gentleman tell me what the difficulty is in the present form of the provision?

Mr. VERPLANCK—I have already stated it. You advertise the sale of your franchise for three months, and parties who really desire and intend to build the road, bid, at what they consider a remunerative price, and a person opposed to the construction of the road, but who has no intention to build it, bids a lower sum, and it must be struck off to such person. The road is not built, and after some time has elapsed, the franchise has to be advertised again, and the same process is reneated—

The PRESIDENT—The time of the gentleman from Rensselaer [Mr. M. I. Townsend] has expired. [Laughter.]

Mr. REYNOLDS—I will modify the words that I proposed to insert after the word "figures," in this way: "for a period not to exceed twenty years."

Mr. M. I. TOWNSEND—Upon that amendment, Mr. President, I desire to say a word. It is said by the gentleman from Ontario [Mr. Lapham], to my surprise, that this is going to put the matter under the control of the Legislature, and enable the Legislature to change the rates of fare upon these roads if they are found to be more than remunerative. I should like to know under what part of our State Constitution, or our National Constitution, if a party has bought a franchise and paid his money for it, the conditions of that franchise can be changed. If the railroad be built, it is a monopoly bought and paid for, for a stipulated period of time, and the conditions cannot be changed. But I have heretofore said all I desired to say on this subject, and I will close by protesting that the cities and towns, generally, of this State, ought not to be made to suffer because of the state of things in that locality from which the gentleman from Richmond [Mr. E. Brooks] comes, and in regard to which he speaks. If the city of New York is so rich that a railway is worth so much to the stockholders there, that furnishes no reason why we, in the other parts of the State, who are scarcely able to get a railroad by contribution and by every other means that we can devise, should be loaded with the same burdens which are found to be desirable, and to be wisely imposed in the city of New York.

Mr. E. BROOKS—One word in reply to the gentleman. What difference does it make whether the locality be rich or poor? For example: the constituents of the honorable gentleman from Rensselaer [Mr. M. I. Townsend] desire to have a railroad in the city of Troy, and the franchise is put up at public auction and sold. If it brings one thousand dollars the city gets the benefit of it. If it brings but one hundred they still get the benefit of it. If in the city of New York a franchise brings a larger sum, the city gets the benefit of it. The amount paid for the franchise, be it large or small, will be in proportion to the value of the franchise, and it does not affect the principle in the least.

Mr. COMSTOCK—If it be in order before the vote is taken, I would like to inquire of the gentleman from Monroe [Mr. Reynolds], what will become of his railroad after the twenty years have elapsed?

Mr. REYNOLDS—I suppose the franchises will return again to the State, to be sold again to the highest bidder, and that in the mean time the city may have doubled its population, and the franchise, therefore, may have become worth double as much as it was before.

Mr. COMSTOCK—To whom will the rails and ties belong?

Mr. REYNOLDS—Those who bid for the franchise in the first place, will bid, I suppose, with the understanding that the road is to revert to the State at the end of the specified term, just as persons do before building upon other people's property.

The question was put on the amendment offered by Mr. Reynolds, and it was declared lost.

The question then recurred on the amendment offered by Mr. Alvord, and it was declared carried.

Mr. BERGEN—I move to add in the second line, after the word "cities," the word "towns," so that it will read. "No street railroad shall hereafter be constructed or operated within any of the cities, towns, or incorporated villages of this State." There will also be required some slight change in the latter part of the section to correspond with this. My object in making this motion is this: This Convention appears to deem it necessary that the construction of these railroads should be subject to the consent of the cities and villages through which they may pass, and also to the consent, of at least the owners of one-half the property (in value) on the line of the road. But the towns are left without any restriction whatever, in this respect. Now, in the county of Kings, there are some three or four railroads outside the city of Brooklyn running all the way across towns, and there are others in contemplation. If it is to be left as it now stands, without this amendment, parties may incorporate and build their roads through the towns, not only without the consent of the inhabitants on the lines of road, but also without the consent of the town authorities. In my judgment, it is unjust to leave the matter in that situation—to guard the cities and villages, and leave the towns unguarded. If it is just that the consent of the owners of property along those roads should be obtained in cities and villages, it is certainly just that the same consent should be obtained from citizens along the lines of road built outside the cities and villages. For this reason I move this amendment. In my judgment, the whole section should be stricken

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out. I doubt the propriety of clogging the Constitution with any thing of this kind. The effect of this section if adopted, will be this: it will be a great favor to present railways, a great boon to their owners, who will in consequence of its retarding the building of opposition roads, rejoice at it; and you could not do them a greater favor than to put this article or section in the Constitution.

Mr. VEEDER—I desire to amend in line nine, by inserting after the word "owners" the word "cannot." The Convention will observe that this section provides for obtaining the consent of the owners of property along the line of the road, and then it says that if that consent be not obtained, they may apply to the supreme court for its consent to construct the road. Now, as the section stands, they can go to the supreme court in the first instance, because it does not say that they may apply to the supreme court, provided the consent of the owners cannot be obtained, but provided it be not obtained.

Mr. OPDYKE—I hope that this amendment will be adopted. I think the objection urged by the gentleman from Kings [Mr. Veeder] has great force. The committee certainly intended, and I hope the Convention intend, that it is only after having tried to get the consent of the property owners, and having failed to do so, that application can be made to the supreme court for authority to construct street railroads.

Mr. VEEDER—My amendment is to strike out the word "not," and insert before the word "be," the word "cannot."

Mr. OPDYKE—I should prefer the phraseology to be something like this: "that in case the consent of the property owners be refused," but the pending amendment is to the same effect. It will be perceived that the objection of the gentleman from Kings [Mr. Veeder], to the present form of expression is well founded, because as it now stands, applicants need not go to the property owners at all.

Mr. VEEDER—As the word "obtain" occurs in the section immediately preceding, I think it is better to retain it here also.

The question was put on the adoption of the amendment of Mr. Veeder, and it was declared carried.

Mr. HALE—If there are no further amendments to be offered I move to strike out the seventeenth section.

Mr. STRATTON—That is a motion I was about to make myself. I think this section will work mischief, and be productive of no good, and will not attain the object for which it was intended. In the first place therefore, persons cannot go through the ordeal which this section provides in order to become the owners of the franchise of a street railroad. Suppose that they comply with the first condition, and they obtain the consent of the majority of the proper owners? Having done that at great expense and trouble, they have then before them the expense of an application to the supreme court, and having made that application, and obtained the consent of the court, then the whole thing is set afloat subject to the combinations of parties against those who have spent their money in complying with these first and second conditions, and so they will run the risk of losing all their time, trouble and expense by being overbid by other parties who come in after all these preliminaries, and purchase the charter at a higher price than those who have complied with the first conditions can afford to pay after having already expended so much money and time. My second objection to this section is, that we have already provided for every thing that is necessary in relation to these street railroads. In the article upon corporations, we have provided that corporations may be formed under general laws, but shall not be created or amended by special acts, except municipal corporations. The Legislature, therefore, under that provision of the Constitution must provide by general law for the building of these street railroads. In the article now under consideration we provide in the twentieth section, that the Legislature shall not pass local or special laws in either of the following cases, and among these cases is the granting to any individual, association or corporation the right to lay down railroad tracks in any locality within this State. I think, therefore, that when we have adopted this twentieth section of this article in connection with the article upon corporations, we have provided such safeguards, as that the Legislature cannot, by any special legislation, create these street railroad corporations.

Mr. RUMSEY—I apprehend that the gentleman from New York [Mr. Stratton] does not realize the condition of things that will exist unless there be some restriction put upon the power of creating these railroad corporations beyond the general law which the Legislature is required to pass. What is the provision in the Constitution upon this subject? It is that by general law, and only by general law, shall provision be made for laying down rails in any locality in this State. Adopt that and put no restriction upon the companies that will be organized under that law, and the result will be that the company may organize themselves under the general law, and there is nothing to prohibit them from going into any and every street in the city of New York and laying down railroads without the consent of the local authorities, without the consent of the landholders and without any consent whatever.

Mr. M. I. TOWNSEND—Will the gentleman allow me to ask him a question?

Mr. RUMSEY—Yes, sir.

Mr. M. I. TOWNSEND—I desire to ask if the law as it stands now, and as it has stood since 1850, does not require that consent of the local authorities in such cases?

Mr. RUMSEY—I do not understand that it does.

Mr. M. I. TOWNSEND—I understand that it does.

Mr. RUMSEY—There is a provision that the local authorities shall not give that power without the consent of the Legislature.

Mr. VEEDER—The law of 1860 takes away from the local authorities of the city of New York the right of granting franchises to construct street railroads, and vests that right absolutely in the Legislature.

Mr. M. I. TOWNSEND—That is the law in regard to the city of New York, but the general law is otherwise.

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Mr. RUMSEY—What we propose is to allow localities in which these roads are to be constructed to judge of the propriety of their construction; and unless you adopt that provision there is nothing to prevent parties from laying down a railroad anywhere they please.

Mr. COMSTOCK—I hope the motion to strike out this section will prevail. I have no language strong enough to express my own sense of the inexpediency of undertaking to frame a code of constitutional law upon this subject. Now, in reference to this section, there is nothing in its details that ought to commend it to the favor of the Convention. All that there is meritorious in the first part of the section is already in the existing law. My recollection is entirely in accordance with that of the gentleman from Rensselaer [Mr. M. I. Townsend], that the law of the State now provides that no street railway can be built in a town without the consent of the local or municipal authorities. And moreover, if I am not wholly mistaken in my recollection, the law also provides that the consent of a majority of the landholders along the line of the road must also be obtained. Unless my recollection is at fault, we have now in the existing law of the State all that is proposed to be put in the first of this section of the Constitution.

Mr. RUMSEY—With the permission of the gentleman from Onondaga [Mr. Comstock] I will make a suggestion. It is this, that the local authorities had that power until the law of 1862 took it away from them, but under that law they have no power whatever over the matter.

Mr. COMSTOCK—I would like to see that law of 1862 made so by the Legislature. The observation of the gentleman suggests that public opinion, let alone what is expedient and just, is liable to change from time to time as circumstances may change. It is founded upon an erroneous principle, to undertake to insert such a code in the organic law; for, when we find that it will not work well, or that it is inconvenient in its practical operations, we have no power to change it. Now, it is required by another section of this same article that street railroads shall be built under general laws, and that no special laws to that end shall be passed. I take it for granted that whatever general law shall be enacted upon this subject will be a just, fair, and wise law; I take it for granted that it will be a law requiring the consent of the municipal authorities of the city, and the consent of the owners of property also, or a majority of such owners. Why should it not? Why should we anticipate that the Legislature will pass a law which ought not to be passed—a law that would be unwise and unstatesmanlike? Why should we refuse to have any confidence whatever in the wisdom and intelligence of the Legislature?

Mr. LIVINGSTON—I would like to answer the gentleman from Onondaga [Mr. Comstock] by saying that all the laws that have been heretofore passed by the Legislature have never required the obtaining of such consent.

Mr. COMSTOCK—I think the gentleman is mistaken. That consent has been obtained; but, if not so, I agree that the law should require that such consent should be obtained. But I agree, also, and insist, that the subject belongs to the legislative power, and does not belong in the Constitution of the State. Circumstances may change, and I am opposed to fixing this unalterably in the organic law. Allow me one word in regard to the idea of putting up these franchises at public auction. This suggestion has something plausible in it, no doubt; there is something attractive in the idea of selling these franchises for a large sum of money; but, after all, the real question is, do the public gain any thing by that? I tell you, Mr. President, the purchaser of such franchises will get his compensation back in the fare that he will charge for the carrying of passengers. The passengers will gain nothing by it, but will lose. Suppose a franchise cost the purchasers ten millions in the city of New York. They must get that back again, and they will get it back again; and whenever you go to the Legislature to regulate the fares upon such a railroad, you will find the subject essentially beyond legislative control, for you will be met with the plea that the purchaser has paid ten million dollars for the franchise of operating a city railroad, and he must have that paid back in fares that he receives for the carrying of passengers. This subject, in my judgment, should be left to the discretion and regulation of legislative power. I think it wholly inexpedient and unwise to say any thing in the Constitution in regard to it.

Mr. VEEDER—When this subject was under consideration in Committee of the Whole, the Convention will remember that I made a motion to strike out the entire section. I have not changed my views on the subject since. So far as this section is concerned, in requiring the consent of the local authorities to the construction and operation of street railroads, I am entirely in favor of it; but, sir, I think that the subject can be properly considered and properly provided for in the article reported by the Committee on Cities in reference to these franchises. By the statutes of 1860 the Legislature took from the local authorities of the city of New York the absolute control which they had previously possessed, to allow the construction and operation of street railroads, and vested the power exclusively in the Legislature. By a provision in the charter of the city of Brooklyn, an amendment was inserted, by which the local authorities were prohibited from authorizing the construction and operation of city railroads, the same as in the city of New York, and we now have to come to the Legislature to obtain the right to construct a street railroad. Then we go back, having that consent, and do not require the consent of the property-holders along the line of the proposed road. I believe it is so in other cities; I believe that horse railroads or street railroads in Syracuse, Utica, and elsewhere, have been built under various acts of the Legislature, and not with the assent or license of the city authorities. But, sir, this subject, I think, has its proper place in the article reported by the Committee on Cities; and I think that a provision should be made delegating absolutely to the local authorities of the various cities this power for the construction and operation of railroads, as well as many other powers that have been usurped by the Legislature from time to time.

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Mr. ROBERTSON—Being one of the committee which has brought this matter before the Convention, in reference to the powers and duties of the Legislature, I have been anxious that all the parts of this report should be retained as we originally adopted it, after considerable consultation and discussion. I was desirous that every restriction on the legislative powers which was likely to prevent the collection of what is commonly called the "lobby," for the purpose of advancing individual interests (although the advance of these interests might be productive of public good, yet not to as great an extent in proportion, as individual interests are promoted by it) should be incorporated in the Constitution to prevent the recurrence of evils of that kind. This article contains such restrictions on the powers of the Legislature—the Legislature being the supreme power in the absence of restrictions in the Constitution. So far as the objection which has been made by the gentleman from Kings [Mr. Veeder] that this article is not the proper place for the clause, it seems to me that it is a place as proper as it is for any other restriction which is contained in the article. It appears to me that the Legislature should be restrained from exercising its powers, from time to time, capriciously or otherwise, in regard to its invasion of private rights in the authorizing of these roads in cities, which, although they perform a public service, yet do trespass upon private rights. In regard to the clause which the gentleman from Onondaga [Mr. Comstock] has referred to, providing for the sale of these franchises at public auction, to the lowest bidder, I agree with him entirely, and have always held that opinion, in matters of that kind, in the city of New York. I have always urged in the granting of these franchises, so far as it depends upon the consent or license of the city authorities, that they should be given to those who will run their cars at the lowest rates of fare; that in that way the greatest public good could be obtained. It takes from the officers of the city the management of large sums of money and the necessity of their investment, which is always a danger to be avoided wherever we can. It has been by means of these city railroads that the city of New York has grown, and is still increasing in numbers, population and wealth. Without them, the business of the city could not be carried on as it is. It appears to me, if gentlemen will consider it, that this is the proper place (if they are not opposed to the principle of restricting the Legislature in regard to these grants) to make the restriction. I hope, therefore, that the seventeenth section will be retained.

Mr. OPDYKE—I am unable to appreciate the force of the objections that have been urged to this section. On the contrary, I regard it as the most valuable and necessary section of the article. What are the facts and circumstances which justify and demand it? It has been said already that the legislation upon this subject has not been uniform, that it has established one rule for the city of New York, and another rule for other portions of the State. Now, sir, these railroad franchises in the city of New York, it is well known, are of more value than those of all the other cities and villages in the State combined. In regard to those, the Legislature has taken from the local authorities—from the people of the city of New York—all control over this matter; and the sum of ten million dollars, which has been named by the gentleman from Onondaga [Mr. Comstock], as a sum that would be likely to be given for these franchises, and which is to be drawn again from those who travel upon the roads as passengers, is probably what the franchises heretofore granted would be worth. And that sum has been given away to legislative jobbers, who have put it into their pockets, and who are now charging passengers as much as they could have obtained if they had paid a fair compensation for their franchises. This is the existing status. We desire to correct this and to have these grants made in accordance with the principles of justice. To do this we propose to take from the Legislature the power of continuing this policy of injustice and inequality. And what do we require? It is simply that no street railroad, in any city or village, shall be constructed without the consent of the local authorities; in other words, without the authority of the people of the city or village. Is not that right? Should legislative jobbers be permitted through legislative action to foist an injurious incumbrance upon a city or village without the consent of the people of the locality? If it be an accommodation to the public, the people will at once, and the local authorities will at once grant the needed authority, and especially if it is necessary for the convenience and prosperity of the locality. The section requires that besides the consent of the local authorities, there shall be obtained the consent of a majority in interest of the owners of the property on the street. But knowing that human nature is selfish, and that private interest sometimes stands in the way of the public good, it is provided that if the majority in interest of the property holders refuse their sanction to the grant, then the applicants may go to the supreme court; and if, in the judgment of that tribunal the public good will be promoted by the grant, they have the power of overruling the action of the property holders. I can conceive of no possible rule that can be established, more equitable, more just, and more free from valid objection. With this view, I cannot conceive how it is possible that this Convention can refuse to put into the organic law a provision so conducive to good, and so fatal to practices not only wrong in themselves, but which have disgraced our State for years. I do not see how members can possibly refuse to do so, and I trust the section will be retained.

Mr. M. I. TOWNSEND—I have but a few words to say in reference to this subject. When we speak about the value of these franchises in the city of New York, I put it to this Convention whether those who own these franchises will desire these obstructions upon the building of the roads or not. I ask this Convention which action would be in the interest of those who hold railroad franchises now in the city of New York? Let us not make any mistake about it. If we mean to aid the city railroad monopolies, if we mean to aid railroads which carry in a car de-

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signed for thirty passengers over seventy, leaving forty to stand up and hang on to the straps inside or the rails outside, if we mean to act in their aid, let us understand it. But if we mean to act in the aid of the other class let us understand that. Do not let us lay the flattering unction to our souls that we are acting in opposition to the present railroad interest of New York by incorporating this provision. I submit it for the consideration of the intelligence of this Convention as to what is for the interest of this monopoly; what is likely to put obstructions in the way of building of future roads in the city of New York? Is not this section drawn and put into shape in the interest of the obstruction—in the interest of the existing roads? If it is not drawn and put into shape in the interest of obstruction and the existing roads, I should like to know in what interest it was drawn and for what purpose, except to prevent the building of more roads. If it be an evil, let us stop it entirely; but if we do not mean to prevent the chartering of any more railroads by persons who compel seventy persons to ride in a car that is designed for the accommodation of thirty, it seems to me this provision should not be adopted. I wish to say another thing to the gentleman from Kings [Mr. Veeder]. I have had occasion to examine the laws upon this subject, and I can assure the Convention that a street railway cannot be laid under the general law, as it exists at the present time, through any city other than New York and Brooklyn. I do not know but there may be special laws in regard to these cities; but they cannot be laid in any city in the State other than those without first obtaining consent of the local authorities. I know there was an attempt made in my own town, but the existing roads had the power to distribute stock and by that means they prevented the common council from giving any more accommodations.

The question was put on the motion of Mr. Hale to strike out the section, and, on a division, it was declared carried, by a vote of 29 to 24.

Mr. LIVINGSTON—As I consider this subject one of vast importance, I feel called upon to raise the point of order that there was no quorum voting.

Mr. HADLEY—The gentleman can accomplish all he desires by moving the reconsideration of the vote just taken.

Mr. LIVINGSTON—Then I will take that course.

The PRESIDENT—The motion to reconsider will lie on the table, under the rule.

The being no further amendment offered to the section, the SECRETARY read the next section, as follows:

SEC. 18. No office shall be created for weighing gauging, culling or inspecting merchandise, manufactures, produce, or commodity whatever; but nothing in this section contained shall affect any office created for the purpose of protecting the public health or the interests of the State in its property, revenue, tolls or purchases, or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any offices for such purposes hereafter.

Mr. ALVORD—In order to make sense of this section, we should either strike out the word "whatever," in the third line. or insert the word "any" in the second line between the word "inspecting" and the word "merchandise." I am inclined to think that the latter is the best amendment, and I therefore offer it.

The question was put on the amendment offered by Mr. Alvord, and it was declared adopted.

Mr. WALES—I offer the following amendment:

The SECRETARY read the amendment, as follows:

Insert after the word "but," in the third line, the following: "the Legislature shall provide, that such business as weighing, measuring, gauging, culling and inspecting merchandise, manufactures and produce, shall be done under license, and not otherwise."

Mr. WALES—I do not now propose to go over the argument I imperfectly made when I proposed this amendment in Committee of the Whole; but I do desire, in the most earnest manner, to call the attention of this Convention to the magnitude of this question. Every person who purchases for his own consumption flour, sugar, salt, leather—almost any of the necessaries of life—is to feel, for good or for evil, the acceptance or rejection of this amendment. Pass it, and you throw responsibility upon those who act as umpires between the producer and consumer; reject it, and you leave the consumer without protection. The entire internal trade of the State is to be affected by your action on this question. The only argument attempted against this amendment is that it would create a body of officers to execute it. This is substantially the ground taken by the gentleman from Onondaga [Mr. Alvord]. In his fervid, earnest, impassioned mannner he warned us against this evil. If there had been any thing else to have been said against it, his sagacity would have discovered it. Now, I take it, that if his premises are wrong, his conclusions fail. Are licensees officers, either in fact, or by any fair inference? A licensee is permitted to do certain acts—these acts being voluntary. An officer is authorized to perform certain duties—these duties being mandatory. Are your peddlers, your hackmen, your carmen, your pawn-brokers, your hotel-keepers, officers? The mere enumeration of them shows that they are not. There are in this great State about ten thousand bar-rooms and saloons for the sale of intoxicating drinks. You throw the protection of the law about this business and require a certificate of good character, to be given of the licensee, before he enters upon this business of questionable morality. Yet, the man who inspects the flour that every poor man eats, does it without accountability or responsibility. I protest against this discrimination in favor of intoxicating drinks; and ask protection for bread. In this connection I wish to read from the proceedings of the Farmers' Club of the American Institute, an association under the protection of the State and making annual reports to the Legislature:

"At the meeting of the Farmers' Club held yesterday the following preamble and resolutions were unanimously adopted. The committee ap-

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pointed by the Chair were F. C. Treadwell, Sen., Solon Robinson, Dr. Z. E. Snodgrass, Wm. S. Carpenter, S. Edwards Todd—to which, on motion, Alderman Ely, Chairman of the Club, was added.

"WHEREAS, About forty years ago, the city and county of New York had under the protection of a law of the State, a standard grade of superfine flour, fully equal, if not superior, to the standard of any other State in this Union: and *whereas*, under the faithful enforcement of that law, the reputation of New York superfine flour was from previous depression raised above that of most of the other States, both at home and abroad; and *whereas*, under the practical abolition and disuse of the inspection laws, the reputation of New York superfine flour has sunk to such a depth of degradation that sales of it in our market are daily reported at less than half the price of good superfine flour in other States, and the declaration is publicly made by gentlemen from other States that 'it is a remaakable fact that a New York brand of superfine is enough to condemn a barrel of flour as bad,' and to the end that the wheat of the farmers of the State of New York, as well as the flour made from it may be raised to its former high rank and character; therefore be it

"*Resolved*, By the Farmers' Club of the American Institute, that a committee of five be appointed by the Chair to consider and report to the club such measures as may be deemed needful to restore the character of New York flour to its former high standing, and to protect the public health from the evil effects of deleterious or poisonous food; also, to prepare memorials to the Governor and Legislature, for their consideration, and for such action and relief in the premises as they may be able to afford."

This resolution was passed on about the 10th of December, 1866.

On the 8th of January, 1867, the committee made a report, from which I read:

"At a meeting of the American Institute Farmers' Club, on Tuesday, the following report was presented by the committee upon the subject of unsound flour:

"In their report of last week the committee confined themselves to a brief statement of the Constitution and laws of the State of New York relating to the inspection of flour, and the appointment of inspectors of flour, meats, etc. They now report a statement of facts in relation to the manufacture and sale of unsound, sour and musty bad flour. * * *

"The transactions of the Corn Exchange in putting off unsound flour, through brokers and dealers, are fraudulent beyond description. Bad, very bad flour is passed off as superfine. No lower grade is generally known. In a single case where a sample of middlings or ship stuff was sent in for sale, it was remarked by millers and dealers that the miller who ground it did not know his business—that superfine flour could be made of it. * * *

"Much of the flour branded superfine is made of refuse stuff, sometimes mingled with damaged, even caked wheat, beaten apart by shovels, and turned in with other and less damaged wheat, and sent to the mills to be ground altogether. Millers at the South reserve the best flour of their grinding, mark it 'family' and sell it at home. The next run or quality they mark or brand 'extra,' and send it to New York. Shippers who buy flour for export, put on what mark or brand they please. * * *

"No reliance is or can be placed in the integrity of any brand. One lot may be of fair quality, and the next vile stuff. You must buy by sample and hold the seller strictly to it, or examine every barrel of flour yourself, and test it by mixing and baking, or you are very likely—almost sure—to be cheated. * * *

"One gentleman wanted to buy a large parcel of good flour, and applied to a dealer in wheat to tell of a miller who could supply him. The wheat dealer named a miller who, he said, had lately bought a parcel of 'prime wheat.' On application to that miller, the latter stated that the 'prime wheat' proved unsound; that the flour made from it was still on hand, and must be kept until he could find a customer for it. The parties were too well acquainted not to know that unsound flour, if sold as sound, would be returned.

"A practical miller stated that in grinding a lot of wheat he supposed was turned in as sound, he found it bad, and that the flour was kept on hand a while and then sold to a baker. Of such flour was much of the bread made which was furnished for the soldiers and sailors during the late rebellion." * * *

What is said here of flour is, I think, equally true of fish and pork. It is very difficult to find an "original" package of mackerel in the New York market. The Boston and other eastern inspections of that article, are bought up by speculators in New York and re-packed there, making five or six packages from each barrel, which are sold for quarter barrels. The gentleman from Queens [Mr. S. Townsend] and the gentleman from Onondaga [Mr. Alvord] say, "see them weighed." Very well. You see them weighed. They seem to be correct. Who is to tell how much of the package is fish, or how much is salt? What is true of fish, is, to a certain extent, true of pork. These articles are necessaries of life, and so great are the frauds practiced in them, that it is a subject of debate, to what extent the public health is affected by these frauds. The Institute Farmers' Club say, in a portion of their report, that the Legislature now have the power of appointing inspectors of provisions, meats, grains, flour, meal and bread, for the purpose of preserving the public health. Among the governments of civilized people, I believe that New York is the only one that leaves the health and the interests of its citizens, to the unfeeling cupidity of speculation. Mr. President, it may be set down as a political axiom, that the necessities of trade and commerce are greater than even constitutional law. Where they come in conflict, business rends the barriers placed in the way; and, with unerring elasticity, resumes its normal condition. You placed in your Constitution a section abrogating all your inspection laws. It did not stop inspection for a day. Absolutely necessary in some cases, and a great convenience in others; it has been kept up to this day—it will be kept up while commerce lasts The ques-

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tion is, shall this inspection be done legally or illegally? With responsibility, or without it? protecting the interests of the ignorant, the unwary, the weak, against the cupidity of speculators, or affording them no protection? Mr. President, your Constitution says that no office shall be created for inspecting any commodity whatever. But overriding its own provisions in the fundamental law, this great State, in 1859, found it necessary for its own protection, and for the protection of its customers, to create the office of inspector of salt; that its manufacture of that article might go forth to its customers with such marks of quantity and quality as might be implicitly relied upon. I thank the Convention for the courtesy of extending my time, and for their kindness in listening to me.

Mr. ALVORD—Mr. President, the crying evils of the system of inspection, gauging, weighing, culling and measuring, were so great previous to 1846 that this board of officers had the management, control, and absolute disposition of the sale of the property of the men in the interior who were compelled to send their property to market. So great was this evil that the people of this State, almost unanimously, petitioned, the Convention of 1846 that this system should be abolished, and it was accordingly abolished; and I have yet to learn, sir, that there is a voice of any strength which has come to this Convention from the practical business men of the State, in favor of restoring the system by a constitutional provision. The amendment proposed by my friend from Sullivan [Mr. Wales] is an absolute contradiction of that portion of the section which immediately precedes his amendment. In the first place it says deliberately that no office shall be created for weighing, gauging, culling, inspecting or measuring merchandise, and then comes in his amendment, which says that this shall not be done except by licensed individuals. We should strike out the first part of the section and put in a direct provision by means of which these officers should be created, and not say in the first place that such offices shall not be created, and then almost in the same breath say that they shall be. I am opposed to the whole thing. I believe that here, if no where else, the doctrine of *caveat emptor* should apply. And, sir, I would ask the gentleman whether or no he can make any limit when this license shall end. I send my boy to a grocery for a pound or two pounds or three pounds of sugar or any other commodity. It is as much for my interest as a poor man's, if this system of inspection is right, that there should be a licensed inspector there to determine the question of quality between my boy, who is unable to determine for himself, and the party selling the commodity to me, as there is for a licensed inspector in the case when larger amounts are sold. And, sir, I undertake to say another thing, that the whole tendency of this system of inspection wherever it may obtain, and particularly in regard to the quality of the goods is, that the poorest article shall be certain to sell and that the best article shall take care of itself. When you get the brand of the inspector upon the article, then, as a matter of course, people, in their credulity, seeing the brand of a sworn officer upon the article, are apt to take it as a good thing. So that the tendency of the parties who desire the inspector is to see how poor they can make the article so that it may pass the inspector, and not how good they can make it. I believe the desire of the people of this State, as a whole, and all past experience under the Constitution of 1846 is, that they have found great benefit by having got rid of the inspection laws that existed previously, and that they do not desire to get back again to that system under a constitutional enactment.

Mr. PROSSER—Is a motion to strike out the section now in order?

The PRESIDENT—It is not in order so long as there is a proposition pending to amend the section.

Mr. SPENCER—I think the gentleman from Onondaga [Mr. Alvord] is mistaken as to the ground on which the Convention of 1846 acted in adopting the present section in the Constitution, doing away with the system of official gaugers, measurers, and others. It had been the practice, in relation to the city of New York, and perhaps other localities, to create the office of inspector for almost every article of merchandise, and each one of these offices was made lucrative to an extraordinary degree, and the object of the Convention of 1846 was to get rid of the political influence which was obtained by means of the multiplication of these offices, rather than because of the complaints of those who dealt in the articles which were the subjects of inspection. I have hitherto been opposed to the amendment of the gentleman from Sullivan [Mr. Wales], but I confess that since reflecting more upon the subject, and hearing the reasons which he has now urged in favor of it, I am converted to the position which he occupies. The gentleman from Onondaga [Mr. Alvord] has misunderstood the object of this amendment in another particular. The amendment of the gentleman from Sullivan [Mr. Wales], as I understand it, does not propose to make the inspection of any article compulsory, either upon seller or buyer; but the object of it is, to furnish the means, if the vender of any article in the market desires to have placed upon it a brand or certificate, which shall be the guaranty of its quality, he may have the option to do so.

Mr. ALVORD—I ask whether the proposition of the gentleman from Sullivan [Mr. Wales] does not entirely prohibit the people, if they desire, in the inspection, from any power to choose an inspector, except he is a licensed official—in other words, is it not entirely arbitrary?

Mr. SPENCER—Perhaps it is, in that respect. But it does not seem to me that this is any objection to it, because any person who chooses to apply for the position of gauger or inspector, who is otherwise a competent man, could obtain a license.

Mr. VAN CAMPEN—I move to add the words "but such inspection shall not be compulsory," so as to make the section entirely clear upon that point.

Mr. WALES—I accept the amendment

Mr. ALVORD—I would ask the gentleman to reflect for a single moment and see whether, with the amendment proposed adopted, it is not com-

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pulsory upon the parties who desire to have an inspection of their commodities to go to a licensed inspector, or whether they are able to go outside of them in choosing a person for the inspection. There is no necessity for licensing a man to do the work of inspction, culling, weighing, or gauging. There is no necessity that men should be licensed, for parties stand ready and willing to do this service to the satisfaction of those who apply to have it done. To provide that individuals shall be licensed to do this, will take away from individuals the right to select their own arbitrators, if they should see fit to settle their differences in that way.

The question was put on the amendment of Mr. Wales, as amended, and, on a division, it was declared lost by a vote 26 ayes, the noes not being counted.

Mr. PROSSER—I move to strike out the section.

Mr. S. TOWNSEND—We sometimes flatter ourselves, Mr. President, that we are living in a progressive age, but the success of this motion to strike out the section would be the taking of a very large stride backward. After the question had been under consideration for some ten years, as different applications and modifications were made in the Legislature, the Convention of 1846, as stated by the gentleman from Onondaga [Mr. Alvord], with great unanimity, on the ground, first, of the injurious effect, politically, of the existing laws in reference to the inspections, in putting the nomination of the whole batch of important offices in the city of New York under the control and influence of inspectors, and, in the second place, the facts, as the gentleman has stated, that the poorest class of producers were enabled to raise the nominal character of their products relatively to the standard of the expert producer. I say that these admitted facts were what induced the Convention of 1846, by a decided vote, to abolish the system. Now, sir, whatever degredation may have taken place in some of our institutions, practical or otherwise, within the last twenty years, I am happy to say that there are yet some honest traders in the city of New York, the city of Brooklyn, in the cities of Albany, Buffalo, Rochester, etc. Some few years ago men were startled to learn that eleven million dollars in taxes had to be raised in the city of New York for a single year. A committee of citizens was appointed to see what plan could be devised to reduce this amount of taxation, and there was but one single common councilman who could be found to make a suggestion of its reduction, and he said that it was too late to effect any cure further than a reduction of from three to four hundred thousand dollars in the taxation of that year. The gentlemen were highly respected individuals, influential in the commercial circles, some who have recently gone to their long rest. They appeared startled at this announcement that so far had corruption gone in our city legislation that a reduction of only three hundred thousand dollars could be made in a tax of $11,000,000. After a very decided pause in the conversation I addressed a gentleman now living and representing a large banking interest, saying, "Sir, though there is this degradation in public matters, let me ask you whether we cannot congratulate ourselves on the fact that the tone of commercial honesty has not depreciated. I contend, on the contrary, that it has arisen so much that things which were tolerated twenty years ago would not be tolerated now." I trust that, as our commercial men and commercial circles in our cities have adopted a change more acceptable to themselves by which they employ honest and capable individuals to do the business of weighing, gauging and inspecting, the Convention will not attempt to work a change which will be a retrograde step in this matter. But again. Since the Convention has in every instance, with great reluctance, adopted any thing that looked like an increase in the number of public offices, and that even the proposition of my friend from Richmond [Mr. E. Brooks], looking to the creation of a board of charities, was voted down, and that we cautiously approached the matter of providing for a court of claims, we shall be still more reluctant to adopt a system which will create more than one thousand offices. I stated when the subject was up in Committee of the Whole, *in extenso*, my views upon this subject, and, fortunately or unfortunately, the remarks have been printed and I will not repeat them now.

Mr. PROSSER—I wish to understand why it is urged that the striking out of this section creates a thousand offices. It seems to me, sir, that after twenty years' experience without any inspection laws, the people of this State are pretty well prepared to judge whether they want them or not, and prepared to select a Legislature that can make proper rules and regulations in reference to inspection if any are wanted. That is not a very large power to leave to the Legislature, and I think that the restriction is unnecessary, and therefore we ought to strike out the section.

Mr. ALVORD—There are some gentlemen who are in favor of the proposition of the gentleman from Sullivan [Mr. Wales] upon the ground that this inspection was not to be compulsory. Now, sir, I trust that those gentleman will vote against this proposition to strike out the section, because if the Convention leave the subject to the Legislature they will have the power to appoint these persons and make inspection compulsory, and we we shall get just exactly in the same position we occupied previous to the adoption of the Constitution of 1846, when the cream, or a large portion of the profits, of the people in this State in sending their produce to market was cut off, either from the deterioration of quality by inspection, or the charges made for the inspection. Sir, instead of one thousand officers, as has been stated by gentlemen, existing under the laws previous to the Constitution of 1846, if gentlemen will look to the statistics of this State previous to that year, they will find that in the various channels of trade in the different localities there were no less than five thousand, and they were constantly increasing, and they became not only onerous and expensive to the people who were compelled to use them, under the operation of the laws, but they also became a very great and important political engine in the working of the politics of the dominant party of the State. Sir, I say here that when the exigency comes, and it may come if this

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section shall be stricken out, that the dominant party desire such a means for use, they can come before the Legislature and create such munitions of war for the purpose of carrying on the political warfare; they could go over the whole of this ground and create a horde of officers to fatten upon the productive industry of the people of this State merely for the purpose of carrying out their political views. I trust, therefore that this safeguard, initiated in the Constitution of 1846, will be permitted to remain in the instrument which we are now framing.

Mr. VAN CAMPEN—I think it is better to leave this question to the Legislature. I assume that if the abuses growing out of the system of inspection were so great as the gentleman from Onondaga [Mr. Alvord] states, the Legislature would have corrected the abuse. The principle of embodying a constitutional provision of this character is to tie the hands of the Legislature utterly, and I hold it to be entirely wrong. I am opposed to the principle. I understand that the reason why the article was incorporated in the Constitution of 1846 was, mainly, because of the inspection of flour in the city of New York, which was to be shipped to foreign ports. Gentlemen claimed, as a matter of course, and properly claimed, that when flour was not to be used in the city of New York, but was going to foreign ports it ought not to be compelled to submit to inspection, and the expenses dependent upon it; that it was entirely unnecessary, and that no good resulted to the people of the State of New York from it. It was principally upon that ground that that article was incorporated into the present Constitution. Why do you seek to incorporate a principle here which utterly prevents the creation of a system of inspection, so long as this Constitution shall exist leaving to the Legislature no power to act in the matter, should it become necessary to have inspectors? If you do nothing upon the subject here but incorporate the principle that all inspection shall be done by licensed inspectors, and that no individual shall be compelled to have his property inspected by them; that is the only reasonable thing you can do; but certainly you should not tie up the power of the Legislature acting in a matter of this kind as the exigency may require.

Mr. WALES—I would like to ask my friend from Onondaga [Mr. Alvord] why it is necessary that salt should be inspected, and other articles of manufacture should not be?

Mr. ALVORD—I will answer the question of the gentleman. The reason why salt is inspected is because it is a matter of interest to the State. They inspect the salt for the purpose of receiving by weight the State duties. It is of no consequence to the manufacturer.

Mr. COMSTOCK—And I will state also, that the manufacturers of Onondaga salt do not require the inspection for their protection, but that they would gladly dispense with it if the State could do so.

Mr. M. I. TOWNSEND—Another reason than has been stated operated to induce the insertion of the provision now under consideration in the Constitution of 1846; and that was this: There were more than five thousand inspectors, perhaps more than ten thousand inspectors of lumber, inspectors of flour, inspectors of ashes, inspectors of hops, and for aught I know, inspectors of skips and jumps. [Laughter.] There were inspectors for every thing, and with that number under the control of a political party they became a power, and it only became necessary when an object was desired to be accomplished, to send down the flat—an order to the province was sent out, and every one of these men answer to the key note that had been struck at the capital. And it was for the purpose of aiding in the destruction of that centralization, which some gentlemen seem to have singularly forgotten since the Convention of 1846, that the provision was put in the Constitution, which swept the system out of existence. There is nothing in the world that you can put in the hands of the central power of a State that is so mischievous in its influence, and for that reason, more than any other, I rejoiced to see the whole thing go out of existence in 1846, and I hope it will never be restored in the Constitution of this State. I have confidence in this, that the men of this State can manage their political affairs without the aid of satraps in localities under the direction of the central power.

The question was put on the motion of Mr. Prosser to strike out the section, and it was declared lost.

Mr. WALES—I move the reconsideration of the vote by which my amendment was lost, and ask that the motion lie on the table.

The PRESIDENT—It will be so ordered.

There being no further amendments offered to the eighteenth section, the SECRETARY proceeded to read the next section, as follows:

SEC. 19. The Legislature shall provide for the speedy publication of all statute laws and of such judicial decisions as it may deem expedient. And all laws and judicial decisions shall be free for publication by any person.

Mr. VEEDER—I think the words "as the Legislature may deem expedient" to be superfluous, and I move to strike them out.

Mr. VERPLANCK—The section requires there shall be published such laws and such judicial decisions as the Legislature may deem expedient. I think the discretion of the Legislature refers to the matter of publishing judicial decisions.

Mr. VEEDER—I do not so understand it.

Mr. VERPLANCK—That is my understanding of the section. I think it is proper to allow the section to stand just as it is. It means that there shall be published the statutes of the State, and such judicial proceedings as the Legislature shall deem expedient.

The question was put on the motion of Mr. Veeder to strike out the words "as the Legislature may deem expedient," and it was declared lost.

Mr. HALE—I think this section has been substantially adopted by the Convention in the article on the judiciary. I therefore move that the section be stricken out.

Mr. ALVORD—I would ask the gentleman from Essex [Mr. Hale] whether, in the article on the judiciary, the statutes are also referred to.

Mr. HALE—I think they are, but I have not the document here to determine certainly.

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Mr. S. TOWNSEND—Does not the gentleman from Essex consider this suggestion the best place for it?

Mr. ALVORD—I would suggest to the gentleman from Essex that if we should re-enact the matter here the Committee on Revision, before whom the article is to be placed, could strike it out if it was found to have been already provided for?

Mr. HALE—On the suggestion of the gentleman [Mr. Alvord] I will withdraw the motion.

Mr. SPENCER — I move to strike out the words "and of such judicial proceedings as it may deem expedient." I am not aware that the Legislature has ever done any thing in the way of providing for the publication of judicial proceedings.

Mr. HALE—The gentleman is mistaken.

Mr. COMSTOCK—The decisions of the court of appeals are published by law, and the law has provided for the appointment of a reporter.

Mr. SPENCER — The statute laws are published at the expense of the State as I understand it, but the judicial decisions of the State are not published at the State's expense. This provision, as it now stands, would seem to require that both should be published in the same manner, at the expense of the State.

Mr. COMSTOCK—This is just like the provision, and I think it is nearly the same language as the provision in the Constitution of 1846. Under that provision, the Legislature proceeded to provide for a reporter of the court, not at the expense of the State, but at the expense of the lawyers and others, who buy the reports, providing merely for the regulation of the price of these reports to the public. This is the existing law as originally framed and as now in operation, under the same provision in the Constitution of 1846; therefore I think it much better to leave it as it is.

Mr. ROBERTSON—I would ask whether it is necessary to have any provision on this subject —whether the Legislature have not ample power to provide for it without providing for it in the Constitution—whether this phrase is not inconsistent in itself, saying that "the Legislature shall provide for the publication of such judicial proceedings as it may deem expedient." It seems to be an anomaly—a contradiction—that they shall do that which "they may deem expedient." If they have the power already, I think it is unnecessary to couple it with that qualification.

Mr. COMSTOCK—The use of the term "as they may deem expedient" had reference, undoubtedly to the class of decisions which shall be published. It was intended to give the Legislature power to discriminate between those of higher courts of the State and those of lower courts, and to make it imperative to provide for the publication of some kind of judicial reports, such as they thought ought to be published. The Legislature have thought it their duty heretofore to provide for the publication of the reports of the court of appeals, under the present Constitution, and I think there should be an imperative provision on the subject, under which the Legislature must act. There was no constitutional provision on the subject previous to the Constitution of 1846; and there was no duty incumbent on the Legislature to provide for publication of reports. What was the consequence of that? The judicial reports were published without any authority of law, as a mere matter of private enterprise, and the result was that enormous prices were asked for law books.

Mr. GRAVES—I wish to know if, under this section, the Legislature can order the statute laws to be published at the expense of the State can they not also order the judicial proceedings to be published at the expense of the State.

Mr. COMSTOCK—I have no doubt that the Legislature could do it, and as little doubt that they never would do it. The Legislature has not yet done it, nor has it been thought necessary to refuse to vest this power in the Legislature because that they might do so.

Mr. RUMSEY—I desire to ask the gentleman from Onondaga [Mr. Comstock] if it is not a fact that the provision put in the Constitution of 1846, giving the right to make these publications free has not had the effect to reduce the price of law books three-fourths what the price was previously?

Mr. COMSTOCK—That is just what I was saying. The profession did have to pay more than three times the price for their law books which we now pay when we consider the different values of the currency. Now, the decisions of the court of appeals, under the law passed pursuant to this provision of the Constitution of 1846, have been the cheapest reports in the world. I do not say they are the best or the worst, but in price they have been the cheapest reports in the civilized world; and it was because the Legislature provided for their publication by contract, to be entered into by certain State officers with the bookseller or the publisher who would make the fairest bid. The consequence of that provision of the law has been that the world has been furnished with these reports at an exceedingly cheap rate. That has been the course of things under the Constitution of 1846, and I really see no occasion to change it.

Mr. SPENCER—After hearing these suggestion I ask leave to withdraw the amendment.

Mr. E. BROOKS—The amendment suggested by the gentleman from Essex [Mr. Hale] was eminently proper, and I think ought to be acted upon because in the twenty-seventh section of the judicial article are the precise words repeated in the article under consideration. The twenty-seventh section of the judicial article reads as follows:

"The Legislature shall provide for the speedy publication of all statute laws."

I therefore move to strike out those words from the pending section, so that it shall read:

"The Legislature shall provide for the speedy publication of such judicial decisions as it may deem expedient."

The question was put on the amendment offered by Mr. E. Brooks, and it was declared carried.

Mr. RUMSEY—I propose as a substitute for the section just stricken out a provision against lotteries. I understand that the question of lotteries was referred by the Convention from the Committee on the Bill of Rights to the Committee

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on the Powers and Duties of the Legislature; and they have reported no article upon that subject. Instead of the one that we have just stricken out I propose, by unanimous consent, to insert the following:

"Lotteries, and the sale of lottery tickets within this State, is hereby prohibited."

The PRESIDENT—The Chair will inform the gentleman that that is new matter, and should come under the head of amendments generally.

Mr. RUMSEY—I suppose so; but it will place a section here to take the place of this, and keep the numbering right.

Mr. VEEDER—I desire to state that this section has not been stricken out—only a part of it.

Mr. E. BROOKS—Is the nineteenth section still under consideration?

The PRESIDENT—One part of it.

Mr. E. BROOKS—Then I hope that, by unanimous consent, the last clause may be stricken out, because that, also, is a repetition. I will read from the judicial article: "All laws and judicial decisions shall be free for publication by any person." Now, we propose to enact it here, and I move to strike it out.

Mr. RUMSEY—I propose to insert in lieu of those words these: "Lotteries, and the sale of lottery tickets within this State, is hereby prohibited."

The PRESIDENT—Which amendment is not germane to the amendment offered by the gentleman from Richmond [Mr. E. Brooks].

Mr. ALVORD—I understand that by the amendment of the gentleman from Richmond [Mr. E. Brooks], the words "the Legislature shall provide for the speedy publication of all statute laws," have been stricken out, because it is in the other article; and also, that the last clause, "and all laws and judicial decisions shall be free for publication by any person," has been stricken out, leaving simply that relating to judicial decisions. I move that those words be stricken out, and that the Committee on Revision be instructed to put them in their proper place in the judiciary article.

The PRESIDENT—The Chair does not understand the motion of the gentleman.

Mr. ALVORD—All there is left of this section is, "The Legislature shall provide for the speedy publication of such judicial decisions as it may deem expedient." I move that that be stricken out, and that the Committee on Revision be instructed to put it in its proper place in the article on the judiciary.

Mr. COMSTOCK—I hope that motion will prevail.

The question was put on the motion of Mr. Alvord, and it was declared carried.

Mr. RUMSEY—Now as the section is all stricken out I ask unanimous consent to insert this proposition as section nineteen.

"Lotteries, and the sale of lottery tickets within this State are hereby prohibited."

This was in the old Constitution, and it was left out of this by mistake.

The PRESIDENT—There being no objection to receive this motion it will be entertained.

The question was put on the adoption of the section as proposed by Mr. Rumsey, and it was declared carried.

The SECRETARY then proceeded to read the twentieth section, as follows:

SEC. 20. No local or private bill shall be passed by the Legislature unless notice of the intention to apply therefor shall have been given in the manner now or hereafter to be provided by law, and no action of the Legislature shall be deemed or taken as a waiver of such notice, nor shall the Legislature in any manner waive the same."

There being no amendments proposed to this section the SECRETARY proceeded to read the twenty-first section, as follows:

SEC. 21. The Legislature shall not pass local or special laws in either of the following cases:

Granting divorces;

Authorizing the sale, mortgaging or leasing of the real property of minors or other persons under disability;

Changing the names of persons;

For laying out, working or discontinuing public or private roads or highways;

For granting to any individual, association or corporation the right to lay down railroad tracks in any locality within this State;

Releasing the right of the State to lands acquired by escheat or forfeiture by reason of alienage;

Giving effect to informal or invalid deeds or wills;

Regulating or prohibiting the sale of intoxicating or other beverages, except it may pass laws on this subject which may contain special provisions as applicable to all cities, or all incorporated villages, or all towns in the State, in any case for which provision has been made by any existing general law.

And the Legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases where a general law can be made applicable.

Mr. VEEDER—I move the following amendment: Strike out lines fifteen, sixteen, seventeen, eighteen and nineteen, and insert in lieu thereof the words "regulating the sale of intoxicating liquors, wines, ales and beer." This proposition that I offer now is precisely what was offered in Committee of the Whole.

Mr. RUMSEY—Will the gentleman allow me to suggest that the last sentence does not belong there. It is a separate paragraph, intended to prohibit the Legislature from passing any special law, in cases where general laws now exist. So, I apprehend, he does not want to strike it out. It should form a separate paragraph.

Mr. VEEDER—Then I would modify my amendment; to strike out down to and including the word "State," in line eighteen. This proposition is precisely what I offered before in Committee of the Whole. I desire, sir, not to occupy the time of the Convention now upon that subject, particularly, except to say that, I do not see any good reason why there should be any distinction made in this class of legislation between cities and incorporated villages, or towns, or the country. In my judgment, whatever provision shall be made in reference to the sale of liquors, should be uniform in its character throughout the State. In my judgment, there can be no good reason why a separate law, separate and dis-

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tinct in its provisions and character, should be enacted to operate upon the cities and not upon the country. The question of license fee, it seems to me, is precisely the same, necessarily, in the country as in the city. The question of the manner in which business shall be carried on, it seems to me, should be precisely the same, and in my judgment all the questions of the regulation of the traffic and the sale of liquors are materially the same in the country as they would be in the city. Perhaps some police regulations which do not necessarily apply here may necessarily be more stringent in the city than in the country; but the general feature of the excise law, should be uniform in the city and in the country. Upon this question, which I deem of very great importance, I respectfully demand the ayes and noes.

Mr. SMITH—Mr. President—

The PRESIDENT—A call for the ayes and noes is pending.

Mr. VEEDER—I withdraw the call.

Mr. SMITH—I trust that the proposed amendment will not prevail. It will be remembered by the delegates present, that when this article was reported originally, that clause was not contained in it, and the friends of temperance were willing to leave the Constitution as it stands, so far as this subject is concerned. But this amendment, or one similar to it, was offered by the gentleman from Kings [Mr. Veeder] in hostility to what is known as the metropolitan excise law; and the result of that movement was the provision which is contained in the article now before us. I trust, therefore, that the Convention will not now undo the result of that work. If it is intended by the gentleman to take from the Legislature the power to regulate this whole subject as the circumstances of the case and the wants of the people may demand, then it certainly ought not to be adopted; for it is eminently fit that the whole matter should be within the power and the discretion of the Legislature to regulate according to the wishes of the people, and the exigencies of the future. Will this Convention undertake to say that the Legislature, for the next twenty years, shall be tied up so that it cannot make a regulation for the city of New York, for the city of Albany, or any other city in the State, that shall differ in some particulars from the regulations required in the country? Is it desired that the Legislature shall be restricted from regulating or even prohibiting the sale of intoxicating liquors hereafter, if the people shall demand prohibition? Or, on the other hand, shall the Legislature be left free to respond to the wishes and demands of the people, as circumstances may develop, and as they shall make their demands hereafter? It seems to me that the latter is the wise and prudent course. All laws for regulating or prohibiting the sale of intoxicating drinks are designed for the protection of society; and society has, or ought to have, certainly, the right to protect itself. It is an old and wise maxim,—"*Salus populi suprema lex*," and we ought not to abrogate that maxim in this Convention. The evils of intemperance are wide spread and acknowledged by all. There has been a necessity in all time for some law regulating the sale of intoxicating drinks. It is a very difficult subject to manage, to know what laws should be provided, what are best adapted to meet the wants of the people and the exigencies of the case. In my judgment, moral means are the best to suppress the evils of intemperance, but still some kind of legislation on the subject has ever been deemed necessary, and there are many people in the State who demand prohibitory laws. There are others who insist that all laws on the subject shall be repealed, and the traffic left unrestricted. Another class favor our present excise law, and what the future may develop we do not know. All I desire and all I claim is that, the people, through the Legislature, their organ, possessing the sovereign power of the State, shall be at liberty to make such laws in the future as the circumstances may require. It seems to me that it would be very unwise for this Convention to undertake to restrict the power of the Legislature over the subject. Some gentlemen are willing that we should have a law similar to the one now upon our statute book, because they say it is not prohibitory, but merely regulates the traffic. I beg to differ with those gentlemen. Our present law is a prohibitory law. There is no doubt about it. It prohibits all but the licensed persons; and if the Legislature has power to prohibit nine-tenths of the people, why has it not power to prohibit the other tenth? It is merely a question of extent; it is not a question of power; and I should have had no doubt that power existed in the Legislature under the present Constitution to prohibit the traffic entirely, had it not been for a decision of the court of appeals which is supposed to throw doubt upon the question. Inasmuch as the power of the Legislature over the subject has been questioned, I would leave that body free to enact prohibition whenever the people shall demand it. There is no good reason for restricting the power of the Legislature in relation to the subject.

Here the gavel fell, the speaker's time having expired.

Mr. HALE—I hope that when a vote is taken there will be a division of the question; that we shall first vote upon striking out the part proposed to be stricken out by the gentleman from Kings [Mr. Veeder], and then vote separately upon the substitute which he offers. It will be remembered that, when this article was reported, there was no such provision in it. It was introduced here as an amendment—

The PRESIDENT—The Chair will remind the gentleman from Essex [Mr. Hale], that the question to strike out and insert cannot be divided.

Mr. HALE—Then I will move to amend the proposition of the gentleman from Kings [Mr. Veeder], by striking out the sentence without inserting any thing in its place. It will be recollected that this was introduced upon the motion of the gentleman from Kings [Mr. Veeder], not precisely in its present form, but that the words "regulating or prohibiting" were contained in the amendment which he offered in Committee of the Whole; and that it was urged by the gentleman from Kings [Mr. Veeder], that such a provision should be inserted here. The substitute which he now proposes leaves out the words "or prohibiting" and also omits the portion which

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allows different laws to be applied to villages, cities and towns. What strikes me as the material part of the alteration proposed by the gentleman is the omission of the words, "or prohibiting."

Mr. VEEDER—Do I understand the gentleman to say that my amendment provided for different laws to be applied to villages, cities and towns?

Mr. HALE—I said no such thing. I said that the amendment contained the words "regulating or prohibiting," and the substitute which he now offers omits these words. Without expressing any opinion as to the propriety of a prohibitory law, I am opposed to making any change in our present Constitution upon that subject. Leaving it without the words "or prohibiting," we should have here an express recognition of the right to sell intoxicating liquors—a recognition which would, perhaps, prevent the passage of even such a license law as we have now, which prohibits the mass of men from engaging in that business. If you leave it as it is, "regulating or prohibiting," it is an express recognition of the right of the Legislature to pass a prohibitory law, and a law of absolute prohibition, perhaps, would be sanctioned by this language. I am willing to leave this matter just as it is now under our present Constitution, and therefore I propose this amendment—to have nothing in this article upon the subject; to strike out these lines which were inserted by the amendment of the gentleman from Kings [Mr. Veeder], as amended on motion of the gentleman from Onondaga [Mr. Alvord], and leave the article precisely as it came to us from the standing committee.

Mr. VERPLANCK—Mr. President—

Mr. VEEDER—I desire to raise a question of order. I think the Chair cannot entertain an amendment of the character of that submitted by the gentleman from Essex [Mr. Hale].

The PRESIDENT—If the Chair understands the gentleman from Essex [Mr. Hale], his object will be obtained by voting down the amendment of the gentleman from Kings [Mr. Veeder].

Mr. HALE—No, sir; that is not so. My amendment is to strike out the same that the gentleman from Kings [Mr. Veeder] proposes to strike out, from and including the fifteenth line, to and including the word "State," in the eighteenth line, and to insert nothing in its place. That is my proposition.

Mr. VEEDER—That cannot be an amendment, because it must be an amendment to my amendment. It cannot be an amendment to my amendment when it is already a part of my amendment.

The PRESIDENT—The Chair thinks the gentleman from Kings [Mr. Veeder] is correct.

Mr. VERPLANCK—The committee did not report this portion of the article. It was moved for the purpose of reaching a difficulty in the present laws of the State, creating different laws for different localities; and the design of the gentleman from Kings was undoubtedly to direct the Legislature to pass laws which should be general upon the subject throughout the State. That was the object of his amendment. Now, in doing this inadvertently the word "prohibiting" was put into the section. I recollect this matter very well in the Committee of the Whole. I was engaged in correcting manuscript, or some other matter, when I heard a good deal of laughter in my neighborhood, and I then directed my attention to it; and for the purpose of discovering what it was I was obliged to talk against time for eight or ten minutes, the first and only time I have done so in this Convention, in order to reach the hour of two o'clock, the hour for adjournment. I did this because I wished that this Convention should adopt a Constitution which the people will ratify, and I warn gentlemen of the Convention that if you use the word "prohibition" in this Constitution in reference to the manufacture and sale of distilled and fermented beverages, your Constitution will not be adopted by the people.

Mr. SMITH—Will the gentleman allow me to ask him a question? Does the gentleman think the Constitution would be adopted if we had a clause in it such as those who are hostile to the prohibitory clause desire to have in?

Mr. VERPLANCK—That is not the question under discussion. I want to see where we stand on the subject. It will be recollected that the Convention deemed the question of prohibition of the sale and manufacture of spirituous liquors and the adulteration of those liquors so important as to appoint a special committee upon this subject; and the two reports of that committee are now upon the table of this Convention. The proper time to discuss this question and settle it is when these reports come up for consideration, and it is unfair to the committee which has spent much time upon this subject, to take up this question now without any regard to these reports. The proper thing to do now is to strike the whole of this matter out and leave the question of prohibition and uniform laws for regulating the sale of distilled and fermented liquors to be settled when the reports I have referred to are considered. I am, therefore, in favor of striking out as proposed by the gentleman from Kings [Mr. Veeder] without inserting in this place what he proposes.

Mr. ALVORD—As I had the honor of moving the amendment of the proposition of the gentleman from Kings [Mr. Veeder], which was adopted in Committee of the Whole, I desire to say a very few words. I was entirely willing, as the committee were who reported this article, that nothing should be said on this subject; but coming from the able and eminent gentleman from Kings [Mr. Veeder] who desired by a constitutional provision to give the power to the Legislature, either to regulate or prohibit entirely the sale of liquors [laughter]; and knowing the fact that a very large portion of the people of the State, who think differently on this subject of temperance would be very desirous for the same thing, and thinking and believing that the two extremes had got together on the subject and would both accept the proposition, I thought it would be right to place it in the Constitution. So far as that matter is concerned I am willing to leave it where it is, and I am just as willing, if the gentleman from Kings regrets what he did on that occasion, and now desires to go back on it, that we should begin where we left off, and strike this proposition out entirely.

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Mr. VEEDER—I do not claim the credit of having originated this expression.

The PRESIDENT—The gentleman has once spoken, but if there oe no objection will be allowed to proceed.

No objection was made.

Mr. VEEDER—I desire to say that the proposition, so far as the words "regulating or prohibiting" are concerned. originated with the honorable gentleman from New York [Mr. Duganne], whose proposition was to have general laws regulating or prohibiting the sale of native wines and articles of food.

Mr. ALVORD—Will the gentleman permit me to ask a question? The gentleman from New York [Mr. Duganne] did offer that; but did not the gentleman adopt it?

Mr. VEEDER — I proposed an addition. I proposed to increase that and extend it to intoxicating liquors, wines, ale and beer. I am frank to say that I left in the word "prohibiting" in my proposition for a very different reason from what many gentlemen supposed. I have no great love for some portions of the Constitution which is to be submitted to the people, nor have I any great amount of confidence in the fact that it will be adopted. If gentlemen propose to lug in all kinds of obnoxious provisions into this Constitution it is no part of my duty, as I consider my position here, to take them out; and I propose to leave them in when introduced by the other side. If they want to introduce a proposition to prohibit the sale of liquors throughout the State, I am not going to take it out, because I do not think it will materially help their side of the case. But my proposition, itself, is the proposition that whatever law the Legislature may pass in reference to the sale of intoxicating liquors, shall be uniform throughout the State; that whatever law operates in New York and Kings shall operate in Syracuse and elsewhere throughout the State, as well in the country as in the city. If a liquor dealer at the seashore in the county of Kings, where we have five towns, is obliged to pay a license fee of two hundred and fifty dollars, I want you, gentlemen, to make the same law for the interior part of the State for your country stores. If a man has to pay two hundred and fifty dollars license fee who only does business in the summer months, I want you to try it and see how you like it in the inland towns. I do not intend to deny my proposition; but I claim that the gentleman should not take the entire credit for his proposition which was drawn by another gentleman and submitted by him.

Mr. BELL—I cannot agree with the proposition of the gentleman from Kings [Mr. Veeder]. that the same license fee should be required of every man who sells intoxicating liquors, whether in the cities or in the rural districts of the State.

Mr. VEEDER—I did not say so; I said on the seashore.

Mr. BELL—I am of opinion that men should pay in proportion to the benefits they receive. If a license to sell intoxicating liquors is more valuable in the city of New York than it is in a remote rural district, a larger fee should be paid. I can imagine that on this subject as well as many others, different rules may be applied to our cities from those that are required in the country. Discrimination should be made in regard to the different circumstances in the case and the condition of things. I was not a little surprised at the announcement of the honorable delegate from Erie [Mr. Verplanck]. He informs this Convention that if the word "prohibition" or "prohibit" is contained in this Constitution it will inevitably be defeated. That is an astonishing and gratuitous declaration for any man to make on this floor.

Mr. VERPLANCK—I said in my judgment.

Mr. BELL—I presume we will find in numerous places throughout the Constitution the word "prohibit." This does not provide for the prohibition of the sale of intoxicating liquors—it does not say that the sale of intoxicating liquors is hereby prohibited—but it simply says that during the next twenty years, should public sentiment and the interests of the State demand it, the Legislature may *prohibit* as well as regulate such sale. Is there any thing unfair in that proposition? Circumstances that now surround this subject and public opinion may materially change during that period. It seems to me, sir, that it would exhibit a great lack of wisdom on the part of this Convention to fix and provide a rule in this Constitution in regard to the sale of intoxicating liquors, or any thing else that is subject to the change of public sentiment.

Mr. LIVINGSTON—Will the gentleman allow me to ask him one question. He states that he is in favor of equitable laws. I would like to ask him if he would be in favor of prohibitory laws, if enacted by the Legislature, prohibiting the sale of liquors in any one particular city? Or for instance, in all the cities and leave the sale of liquor free and open in other parts of the State?

Mr. BELL—I would not.

Mr. LIVINGSTON—That could be done under this provision.

Mr. BELL—I am of the opinion, however, that certain laws may be proper and necessary for cities that are unnecessary and improper for the country. I am also of the opinion that the laws regulating municipal affairs should be uniform as to cities, and the laws regulating the rural districts should be uniform in their applications to such districts. I can see no objection to the section as it now stands in the article. It simply leaves this matter to the Legislature to decide as the circumstances may warrant during the continuance of this Constitution. I do not see that it essentially differs from our present Constitution and laws, except in one particular. I think with the gentleman from Essex [Mr. Hale] that the present license law is a prohibitory law, prohibiting every man in the State, except those who have first obtained a license to sell. The court of appeals has deliberately decided that the power to *regulate* does not contain the power to *prohibit*. It is not necessary, for my present purpose, to criticise the decision of this court, or dwell on the limited power which the judges found in the word "regulate;" the people have acquiesced in that decision, and governed themselves accordingly. If I rightly apprehend the object of this Convention, it is to remedy defects

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in the present Constitution, remove all doubtful provisions, so far as they have been discovered, and adapt the fundamental law of the State to the present and prospective requirements of the people. By virtue of the force of this decision, the Legislature is denied the power of prohibiting the sale of intoxicating liquors, should the entire people of the State desire it. Our article on this subject should be full and clear, at the same time it may be left a little flexible, subject to the control of the people as expressed through the action of the Legislature.

Mr. M. I. TOWNSEND—I think the dilemma in which my friend from Kings [Mr. Veeder] finds himself is instructive to the rest of us—that is, it is exceedingly dangerous to write out constitutional prohibitions and provisions without fully understanding in advance the full effect of what we are doing. As is often well said if the Lord should grant all our prayers, he would destroy us by our requests. As this article was originally reported, we should have got along very well. We did not need this addition in. The gentleman from Kings [Mr. Veeder] finds that he does not want it, and I do not think any body wants it; and for that reason I hope that we shall so vote as to dispense with this provision that is so distasteful to all of us; although, personally, I should have been entirely willing to abide by the compromise which we entered into on that occasion, and which, as the gentleman from Erie [Mr. Verplanck] has said, caused a little bit of a laugh at the time we proposed to adopt it. As it appears that he did have to talk against time on this question, I will do what I believe I have never done before—move the previous question.

The question was put on the motion of Mr. M. I. Townsend, and it was declared carried.

The question was then put on the adoption of the amendment offered by Mr. Veeder and it was declared lost, by a vote of 17 ayes, noes not counted.

Mr. VEEDER—I desire to have a count on the other side.

Mr. VAN COTT—Please state the amendment.

The amendment was again read by the SECRETARY.

Mr. VEEDER—I renew my application for the ayes and noes.

A sufficient number not seconding the call, the ayes and noes were not ordered.

Mr. VEEDER—Is a motion in order to postpone this?

The PRESIDENT—It is not in order—the previous question having been ordered. The count will be taken anew, if desired.

Mr. VERPLANCK—If in order, I move to have the previous question reconsidered.

The PRESIDENT—A motion of that kind is in order.

Mr. VERPLANCK—I move then that the vote by which the previous question was ordered be reconsidered.

The question was put on the motion to reconsider, and it was declared carried.

The question recurred and was put whether the main question should now be put, and it was declared lost.

Mr. VERPLANCK—I move now that the consideration of this portion of the section under consideration be postponed until the report of the Committee on Prohibition and the Sale of Adulterated Liquors shall come up.

Mr. ALVORD—I hope the gentleman will not insist upon that motion. I have no sort of question from the complexion of the Convention upon this subject, as indicated, that the result of this will be simply to strike out this clause, the whole of it. That will be the result, and there is no necessity of delay upon that account.

The PRESIDENT—The Chair would inform both the gentlemen that the motion is not in order except by unanimous consent. The only postponement can be by the transposition of the sections.

Mr. E. BROOKS—I would suggest, to reach the difficulty, that so much of the article as has been acted upon, be referred to the Committee on Revision, with the exception of the clause which we have been so recently considering. That will leave it to the future action of the Convention.

The PRESIDENT—That will be in order after we have passed on amendments generally. If there be no objection the section will be passed for the present. Amendments generally are now in order.

Mr. SPENCER—I move the following amendment: In line nineteen of section 21, strike out the words "has been made," and "existing." It reads now, "In any case for which provision has been made by any existing general law." I propose to amend so that it will read as follows: "In any case for which provision now exists or shall hereafter be made by any general law." The object is—

The PRESIDENT—The gentleman will reduce his amendment to writing.

Mr. VEEDER—May I inquire whether the proposition to postpone the consideration of this section carries over the whole section, or this subject.

The PRESIDENT—The Chair understands that it carries that subject.

Mr. VEEDER—That is what I desire to know, because I had another amendment to offer to that section.

Mr. WAKEMAN—I desire to ask for information, whether, under the head of amendments generally, it will not be in order to move to strike out the last portion of the twenty-first section, that we have tacitly passed by?

The PRESIDENT—That motion will be a parliamentary motion.

Mr. SPENCER—I offer the following amendments: to strike out in the nineteenth line of the twenty-first section, "has been made" and "existing," and insert "now exist, or shall hereafter be made," so that it will read "in any case for which provision now exists or shall hereafter be made by any general law." The object of this amendment is that the section shall not be considered to apply only to existing laws, but that it may be made applicable to laws which hereafter shall be made and to avoid the contradiction between this part of the section and the three lines that follow.

The question being put on the motion of Mr. Spencer, it was declared carried.

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Mr. VEEDER—I desire to offer the following amendments: Insert between lines nineteen and twenty of page eight the following: "for ascertaining by proper proof the citizens who shall be entitled to the right of suffrage hereby established." My object in offering this proposition at this time is, that, the Legislature shall also, in all laws that they shall pass in the future in reference to the ascertaining by proper proof of the citizens who shall be entitled to exercise the right of suffrage, such laws shall be uniform in their character throughout the State. In other words, under the provision of section 4 of article 2 of the present Constitution, the Legislature has enacted a registry law, in which it requires the personal attendance of voters in the counties of New York and Kings preceding every election, to be registered; whereas, in other portions of the State, if a citizen is once registered, that is all that is necessary, and the inspectors of election may continue his name on the registry. I desire—

Mr. ALVORD—I feel compelled to rise to a point of order. My point of order is that the gentleman now indirectly undertakes to reconsider and change what has been passed in the article on suffrage; and that he cannot, except by a motion to reconsider that when it shall definitely come up, get any such provision in this article as the one which he now proposes.

The PRESIDENT—The Chair has not the article on suffrage before him.

Mr. VEEDER—I do not believe that, because the Convention in the article on suffrage may have considered the question of the registry law when we are considering an article as to the powers and duties of the Legislature — when we designate certain classes of cases upon which they shall pass uniform and general laws, it is not entirely proper that this proposition shall be considered at this time. I see no good reason why it should not be entertained. I do not know why the gentleman is so uneasy. I do not see the necessity of trying to dodge this question. If you do not desire to extend to us the same privileges in the counties of Kings and New York that you have, then let us know it; if you do desire to let us know that also. I have no speech to make upon this subject. I simply desire that this Convention shall express itself whether it is in favor of a uniform registry law, or whether it is in favor of the obnoxious law that at present exists.

Mr. FOLGER—Will the gentleman allow an interruption? He says, "If you do not desire to extend to us." By that I suppose he means if the republican members of this Convention will not extend to the democratic members. I want to tell him that the phrase which he objects to was inserted in the registry law on the motion of Mr. Allaben, a Senator from Delaware and a democrat.

Mr. ALVORD—I insist upon my point of order; and, in addition to that, I desire to state that the very amendment which the gentleman now proposes to the article has been proposed to the article on suffrage and voted down.

The PRESIDENT—The Chair rules that the point of order is well taken.

Mr. VERPLANCK—I appeal from the decision of the Chair. When the suffrage article was under consideration we settled certain questions in reference to that matter. Now we are upon an entirely different subject. We are regulating the powers and duties of the Legislature, and declaring that upon certain subjects they may pass special laws, and that upon other subjects they shall pass general laws. The question is whether it is competent for this Convention to decide how the Legislature shall act. The proposition is that the Legislature shall act upon this subject by general law, and not by special law. It seems to me that this is a very different thing from the proposition that was voted upon when the suffrage article was under consideration. Whether it is competent for the Legislature, under general laws to enact laws which are not uniform for every division of the State, is the question. I therefore, do not think it out of order in considering the article before us, to say whether the Legislature shall proceed by a special or a general law to legislate upon this subject.

The PRESIDENT—The Chair rules that this Convention having already declared its sense upon this proposition, can only change it under the rules which it has adopted for its own government, to wit., by reconsidering its former action. Shall the decision of the Chair stand as the judgment of the Convention?

Mr. VERPLANCK—I withdraw the appeal.

Mr. HALE—If in order, I now renew the motion which I proposed to make before—to strike out, commencing from and including from the fifteenth line, to and including the word "State," in the eighteenth line.

The PRESIDENT—That is in order.

Mr. VEEDER—Did we not suspend the consideration of that question until our action upon the report of the Committee on Adulerated Liquors?

The PRESIDENT—We did not. It was passed over for the time; and the Chair ruled that under the head of amendments generally, it would be parliamentary to move to strike that out.

Mr. VEEDER—That clause was passed over and if taken up, the first question in order is my motion which is pending. If we renew the consideration of this subject, I claim that that is the first question in order.

The PRESIDENT—If it be the desire of the Convention, it will be passed over, although the motion is strictly a parliamentary motion.

Mr. ALVORD—I object.

The PRESIDENT—The question is on the motion of the gentleman from Essex. [Mr. Hale].

Mr. VEEDER—I raise the question of order that if we are to return to the consideration of this provision, my motion to amend takes precedence.

The PRESIDENT—The point of order is well taken. The gentleman's motion to amend must take precedence of that to strike out. The question is on the motion of the gentleman from Kings [Mr. Veeder], to amend.

Mr. VEEDER—And upon that I renew my demand for the ayes and noes.

A DELEGATE—I rise to a point of order.

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Have we not passed by this clause by a vote upon this question?

The PRESIDENT——No, sir; it was by unanimous consent of the Convention.

Mr. E. BROOKS—Then I suggest that having been made by unanimous consent, it must, of necessity, go over.

The PRESIDENT—The Chair understood the unanimous consent to apply to simply that stage of the business. We are now under the head of amendments generally under which the Chair ruled that the motion of the gentleman from Essex [Mr. Hale], was in order as well as any other amendment which may come in under that head.

Mr. E. BROOKS—That we may not be arrested in our progress, I again ask unanimous consent that this provision of this section be postponed for the present.

Mr. VEEDER—If we are to be met again by a motion to strike out, I must object. I do not want to be defeated in obtaining a vote upon my proposition. I do not want to break up the Convention if there is no quorum; or any thing of the kind; but I want my proposition met fairly and squarely. If in order I will move to postpone the subject until Wednesday next. I do not want to take any advantage, neither do I intend to permit any advantage to be taken.

The PRESIDENT—If there is no objection, the motion will be received, to postpone until Wednesday next.

Mr. NELSON—Why would it not be better, if t is in order to postpone the consideration of the question at all, to postpone it until after action is taken on the report of the Committee on Adulterated Liquors? If it is in order, I would propose that we postpone action upon this question for the present.

The PRESIDENT—That may be done by unanimous consent.

Mr. NELSON—I suggest that we postpone action upon it until after the Convention shall have acted upon the report of the Committee on Adulterated Liquors. There are two reports from that committee. Of course members can turn to their files and find them. Those two reports present to the Convention the question we have had up here, and present it sharply, so that we must all take one side or the other. There is, first, the majority report, which is very short, and then the minority report, which is only two or three lines. Now, let us postpone action upon this until we have acted upon those reports, and then the Convention will have announced its opinion upon the abstract proposition. I therefore ask unanimous consent to postpone the consideration of this section until after the Convention shall have acted upon the report of the Committee upon Adulterated Liquors.

Mr. VEEDER—That would prohibit us from bringing up this subject in the consideration of the report. Now, I propose that we postpone it until Wednesday next, and at that time consider this subject in connection with that report.

Mr. FOLGER—Why is it not the best way to strike it out of this place, and then if any one wishes to insert it hereafter, the question will come up.

Mr. PROSSER—That is the best way.

Mr. NELSON—With the consent of the gentleman [Mr. Folger] and of the Chair, I will answer him, and state the objection I have to that. Under the present Constitution, the courts have held the excise laws of the State to be valid. Now, the objection made by my friend from Kings [Mr. Veeder], is this. The present Constitution of the State allows an excise law in the city of New York that reads thus and so. It allows a different excise law in other sections of the State. My friend from Kings says that the people of the large cities are opposed to these excise laws. Now, then, if you strike this out, what is the result? The result is, that you will have the present Constitution, or a provision exactly like the present Constitution.

Mr. ALVORD—Will the gentleman permit me to make a suggestion?

Mr. NELSON—Yes, sir.

Mr. ALVORD—My friend from Ontario [Mr. Folger] suggests that we strike out this provision here and leave this question to come up on the report of the Committee on Adulterated Liquors.

Mr. NELSON—Yes, I understand that; but then some members gain their ends. Now, let it stand exactly as it does until the Convention comes to face the precise question sharply. If you strike this out you have the provision of the present Constitution. That is my objection. Let it stand as it does now, with all its parts and complications, and immediately (that is, instantly) after we have passed upon the report of the Committee on Adulterated Liquors, let this question come up. This plan, it strikes me, meets what my friend from Kings [Mr. Veeder] is after, and the question comes up after we know what is the sense of the Convention on the abstract proposition.

Mr. GRAVES—I move you, sir, that this matter be referred to the Committee of the Whole having in charge the report of the Committee on Adulterated Liquors.

Mr. MERRITT—I move an amendment, that the remainder of the article be referred to the Committee on Revision.

Mr. VEEDER—I desire to call the attention of the Chair to the fact that these motions are not in order. I have no objection to having this matter postponed and having it fairly considered, and met hereafter; but if we do not do that, the gentleman from Onondaga [Mr. Alvord] will raise the point of order as he did on the registry law.

The PRESIDENT—The Chair believes the motion of the gentleman from Herkimer [Mr. Graves], which he understands to be a motion to recommit a portion of this section to a select Committee on Adulterated Liquors, to be in order.

Mr. GRAVES—My motion was to leave it to the Committee of the Whole having in charge the report of the Committee on Adulterated Liquors.

The PRESIDENT—The Chair does not think that motion is in order. The Chair did not distinctly understand the motion of the gentleman from St. Lawrence [Mr. Merritt].

Mr. MERRITT—I withdraw it, sir.

Mr. ROBERTSON—If it is in order, I move that the consideration of the report of the Committee on Adulterated Liquors be made a special

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order for Wednesday next, together with the consideration of this section which is now passed by; and I ask the unanimous consent of the Convention to make this proposition.

The PRESIDENT—That motion can only come in regularly, under the head of resolutions, but by unanimous consent it may be admitted now.

Mr. ALVORD—If I was satisfied that the gentlemen who seem to be so very much interested in this particular matter, would not only be here on Wednesday, but also upon each and every day during the sessions of this Convention, for the purpose of giving us a working quorum to do the other business of the Convention, I would consent; but under the circumstances I cannot consent.

The PRESIDENT—Objection being made, the motion of the gentleman from New York [Mr. Robertson] cannot be received.

Mr. VEEDER—Since the gentleman from Onondaga [Mr. Alvord] is so anxious and so tenacious about forcing us to attend here, I now raise the question of order that there is no quorum in the Convention.

The PRESIDENT—That point being made, the Secretary will call the roll of delegates.

Mr. E. BROOKS—I hope this point of order will be withdrawn and the objections that gave rise to it, and that so many of us as are here, will go on and do what we can to dispatch the business of the Convention. I appeal to my friend from Onondaga [Mr. Alvord] to withdraw his objection to the admission of this resolution.

Mr. ALVORD—I do not feel that it is either my duty or my right as a representative of the people of this State to withdraw it

Mr. BELL—I would like to suggest a way by which we can get out of this dilemma. Let this matter be postponed by unanimous consent until that report comes up.

Mr. VEEDER—I want to set it down for a certain day; but the gentleman will not consent to that.

Mr. BELL—The difficulty will be that if it is postponed to a certain day, gentlemen will be present on that day in force, and on that day only.

Mr. VEEDER—I must insist on my point of order.

The PRESIDENT—The Secretary will call the roll of delegates.

The SECRETARY proceeded to call the roll of delegates, and called the name of Mr. A. F. Allen, who answered to the call.

Mr. VERPLANCK—I move that this Convention adjourn until seven o'clock this evening.

The PRESIDENT—That motion is too late; one delegate having already answered to his name.

The SECRETARY proceeded with the call of the roll, and was interrupted by

Mr. VEEDER—If I understand the gentlemen on the other side correctly, they are willing to assent to the proposition of the gentleman from Dutchess [Mr. Nelson], that this be postponed until the consideration of the report of the Committee of Adulterated Liquors, without a day certain. If it is satisfactory to them to postpone it until it comes up in regular order, I am entirely satisfied and I will withdraw my point of order.

The PRESIDENT—No objection being made the call of the roll is suspended by unanimous consent, and it is ordered that the further consideration of this section be postponed until the consideration of the report of the Committee on Adulterated Liquors, without prejudice to the adoption of the remainder of this article.

Mr. VEEDER—That is entirely satisfactory.

Mr. WALES—I offer the following as a separate section:

SEC. 22. The Legislature at its first session after the adoption of this Constitution, shall provide by law for the collection of the United States deposit fund, as rapidly as the terms upon which it is loaned in the several counties will permit. And also for its investment, under direction of the Treasurer of the State, in bonds of the government of the United States.

The question was put on the adoption of the section offered by Mr. Wales, and it was declared lost.

Mr. VEEDER—I wish to renew my proposition in reference to uniform laws, to insert after line 19, section 21, the words: "In relation to the election, appointment, powers, duties and qualifications of inspectors and canvassers of elections." That proposition is precisely what I submitted before in Committee of the Whole. I desire gentleman to express their opinions whether we shall have appointed by the board of police inspectors of elections in the city of New York who reside perhaps in Harlem, or whether we can have the privilege of choosing inspectors of elections the same as you have in the country, to be either elected or appointed, and men who are residents of the localities in which they are called upon to act. I desire them to express their opinions whether our laws upon this subject are to be uniform or not.

Mr. ALVORD—I am very sorry indeed that I come so often in collision with the gentleman from Kings [Mr. Veeder] in matters of this kind, but it seems to me that he should delay these propositions of his, and bring them up by way of reconsideration at the right time. I therefore raise the point of order, that this proposition is liable to the same objection as the proposition made by him before in different form.

Mr. VEEDER—I submit that it is not, because that was a proposition made in Committee of the Whole on this article, and not on the article about which the gentleman is talking. On the other article of which the gentleman is talking, I did not make that point. It was made by my colleague, but it was made when the article on suffrage was under consideration.

Mr. PRESIDENT—This is not the proposition made by the gentleman [Mr. Veeder] before, which the Chair ruled out of order. The Chair believes this proposition to be in order.

The question was put on the amendment of Mr. Veeder, and it was declared lost.

Mr. VEEDER—I move a reconsideration of the vote just taken.

The PRESIDENT—That motion lies on the table under the rule.

Mr. BAKER—I move to amend the twentieth section by inserting in the fourteenth line as follows:

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"Or granting or donating any moneys out of the treasury of this State for or to any charitable institution, association or purpose whatever, unless the act or resolution so granting or donating such moneys shall provide for the equal distribution thereof among the several counties of the State, or for the equal participation of said counties therein, in proportion to the amount respectively contributed thereto by them by taxation."

I am as anxious, sir, to secure a uniform rule in respect to the imposition of the burden of taxation and the distribution of the benefits arising from it as the gentleman from Kings [Mr. Veeder] is to have uniform laws in respect to the regulation or prohibition of the sale of liquors, or in respect to the powers and duties of the registers and other election officers. I offer this amendment at this time, for the reason that, from the action of the Convention yesterday upon the report of the Committee on Charities, there seems to be a disposition to insert nothing in the Constitution regulating the manner and mode of making appropriations or of distributing these appropriations among the beneficiaries of State charities. It has been conceded by almost every gentleman who has spoken upon the subject of charities, that, it is for the interest of the State to make donations for charitable purposes. Now, if it is a duty on the part of the State to contribute large amounts of money annually for charitable purposes, it is equally true, and beyond dispute, that the necessity for charities pervades every part of the State alike, and that those who contribute the money should all participate in the benefits arising from such contributions. This section provides for an equal, fair, and just distribution of these benefits, in proportion to the burden of raising the money; and I cannot conceive how any gentleman, actuated by a fair and candid liberality, can vote against an amendment of this kind, without incurring suspicion of being governed by selfish motives. It is said that the cities have more destitute and poor persons to provide for than the country; but this proposition I deny. In proportion to numbers of population, our country villages and our rural towns have fully their own proportion of the poor and needy among them, and our boards of supervisors have as extensive claims upon their charity, in proportion to their means, as have the different charitable institutions in the cities of the State. It is said by some gentlemen that paupers and destitute persons from the country often go to the cities and become charges upon and receive aid and assistance from the city authorities. That is probably so, but I reply that there is not a county in the State, in the rural districts, but has to provide for and support a large number of paupers from the different cities of the State. Frequently, in the winter, but always in the spring, paupers are sent out from the city into the rural districts, with a supervisor's or poor-master's pass, and are "dumped" out wherever the pass expires, and thrown upon the mercy of the local authorities, who are obliged to furnish them with public aid; and in my own county it is no uncommon thing for the poor-houses to be crowded with emigrants from the cities. I do not undertake to say that this business is not reciprocal between the rural districts and the cities; but I do say that when the Legislature makes an appropriation for the relief of the poor, or for the maintenance of orphan asylums or other charitable institutions, there is as much need and as much right that such appropriation should extend its benefits into the country as there is in the city. All I ask in this amendment is, that, the same law that makes the donation shall provide for the equal distribution of the benefits arising from it.

Mr. ALVORD—This is simply reiterating the same arguments that were used upon the discussion of a branch of this subject yesterday. I am sorry to differ from my friend from Montgomery [Mr. Baker], but it strikes me that by simply stating a few facts that cannot be disputed, the gentleman will be induced to consent to withdraw his proposition. In the first place I deem this to be properly the work of the Legislature. The Legislature has acted in the right direction for the last four or five years, by voting a sum to be distributed among the different localities in the State, in proportion to the assessed valuation of the property in each county.

Mr. BAKER—Will the gentleman allow me to ask him a question?

Mr. ALVORD—I will.

Mr. BAKER—I desire to ask the gentleman, does the statute of 1866 or of 1867 provide for the distribution of the appropriation among the counties according to their assessed value, and with the further condition that it is to be according to the number of the recipients of charity in the several counties?

Mr. ALVORD—I hope the gentleman will not take up my whole five minutes in asking questions, but I will answer him. According to the act of 1866 the distribution is to be made according to the assessed value of property in the different counties; and if the requirements were not performed upon the part of the supervisors of any particular county, the money was to remain in the treasury, and not to be distributed to others; but the difficulty in this matter is here. The county of Montgomery needs no hospital; the county of Erie does need a hospital, and the city and county of New York needs several such institutions; and they are needed, not so much for the resident population as for the people who come there from all parts of the State, and of the world, and require aid; so that it is impossible to do any thing like justice toward the charities of the State by putting an inflexible rule like this into the Constitution. If such a rule were adopted, the result would be, as a matter of course, that, the hospitals located upon the great lines and at the great termini of travel throughout the State, would be unable to be sustained at all, because you would have to give to each one of the counties of the State these charitable donations, in the same proportion that you would give them to these institutions; whereas, in very many of those counties, there is no such establishment as a hospital, and no necessity for one, while at these great centers of travel and traffic, such institutions are absolutely necessary, and necessary, as I have already said, not so much for the local population, as for those who come there from other places.

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Mr. M. I. TOWNSEND—I hope the proposition of the gentleman from Montgomery [Mr. Baker] will not be adopted. The principle which he advocates may be very good for general action, but I can understand that there may well be exigencies in the history of the State where the State should not be tied up by such a provision. Suppose that the cholera should break out in the city of New York, or yellow fever, and suppose there should be a terrible destruction of life by these diseases, and that the charitable institutions of that part of the State should be called upon to make immense expenditures, and that this scourge should not extend beyond that city and neighborhood. Now, if the proposition of the gentleman from Montgomery [Mr. Baker] should be adopted, it would be utterly impossible for the Legislature to make an appropriation to meet the exigency that had arisen without taxing the people enormously, because they would have to make proportional appropriations to the other counties of the State—to the county of Rensselaer, for instance—although the providence of God had protected us there from the cholera and the fever. I can well conceive, sir, that a great many exigencies might arise in the history of this State, where the adoption of this rule would only impose additional burdens upon the people in order to raise money by taxation to be distributed among the respective counties for charitable purposes, without any necessity whatever, but simply because there has been a great calamity in one locality in the State which it was imperatively necessary to meet.

Mr. E. BROOKS—If my friend from Montgomery [Mr. Baker] intends to press his amendment, I hope he will consent to another amendment to be voted upon at the same time—an amendment in the form of a proviso, as follows: "*Provided*, that all moneys raised in any of the counties of this State for schools and charitable institutions shall be expended in the counties where the money is raised."

Mr. BAKER—I accept the proposition.

Mr. S. TOWNSEND—I like the suggestion of the gentleman from Montgomery [Mr. Baker], particularly as modified by my friend from Richmond [Mr. E. Brooks], if we are to continue this habit of going down to the different localities of the State and gathering from them their means and bringing them up here to Albany, and then distributing them with a diminution of a certain percentage, the amount of which is a matter of considerable flexibility or "plasticity," as my friend from Ulster [Mr. Hardenburgh] would say if he were here [laughter]—depending a good deal upon the consciences of members of the Legislature and the lobby. I say now, if we are to continue this practice, certainly some provision, such as that suggested by the gentleman from Montgomery [Mr. Baker], should be adopted. That there are great evils here in the present system of State appropriations, and even in our system of local appropriations, there is no doubt. An illustration of this can be found in almost any locality. I know that in my own vicinity, within a few miles of my residence, there are now two or three individuals retained under the most painful circumstances in the care of their relatives or families, being in some instances in indigent circumstances. In one of these cases, the repulsive chain has to be used to fasten the patient to the floor, although the relatives are as kind as the circumstances of the case will permit; and in another case there are two sons who nobly devote themselves alternately to the care of their afflicted mother. Now, sir, why are those individuals excluded from being benefited by the munificent donations that the State has made for asylums at Utica and elsewhere in the State? It is because these people very naturally do not wish to place their relatives so far away from them. Now, a rule of the kind suggested by the gentleman from Montgomery [Mr. Baker] would enable counties to make their own local arrangements for the benefit of such sufferers. In none of the counties of Long Island, except the county of Kings, is there any provision for the insane: and I say again that, if we are to continue this plan—this imposition upon the tax payers of the State, there are certainly good reasons why some such provision as that here suggested should be made. In reference to the distribution of paupers throughout the State, the gentleman admits very frankly that if the rural districts are sometimes burdened with the State] paupers, they also return a considerable number upon the city. From the semi-official examination, which I had occasion to make some years ago, it came within my knowledge that upon the island of New York, in the vicinity of the lunatic asylum on Blackwell's Island, there have often been found in a single day, between dark and daylight, thirty or forty individuals from the interior of the State, and sometimes from other States, who have been charitably placed by the city of New York upon Blackwell's Island in the magnificent institution which it sustains there. We must remember, sir, that of the insane alone there are eight or ten thousand of them distributed throughout the State. Some of them, of course, in the asylums and public institutions; but a great many of them under the care of their relatives under such circumstances as I have described. Now, I hope that the principle embodied in the proposition of the gentleman from Montgomery [Mr. Baker] will be in some way recognized here so as to obviate this great wrong. Even if we are to continue to act upon this wrong principle of concentrating here the charitable funds of the State, we can at least, by a provision of this character, secure a fair distribution of these funds; and in this way the localities can provide for their own necessities in a much better manner than those necessities can be provided for here.

Mr. BERGEN—I do not know but the adoption of the proposition as it now stands, will tend to do away with an injustice which has existed in this State for a considerable period. I know that under our present laws and under our past laws, the county of Kings has paid annually about $500,000 into the school fund, and that the distribution of that fund was so managed that we got only about $300,000 back; and New York was treated the same way. I always considered it unfair and unjust, but we never could get any redress because the majority of the State were the gainers by the rule, and they chose to preserve

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it unchanged. Now, as to the lunatics, the State provides a lunatic asylum at Utica, and I believe they are about building another. In the county of Kings we have a lunatic asylum supported at our own expense, not receiving one dollar from the State; yet we are taxed for the support of these State institutions in which we have, I may say, no inmates—possibly there might be a single one from our county, although I doubt it. The same is true of New York. On Blackwell's Island the city of New York has an insane asylum, which is supported, as I understand, entirely by the city; yet the people of that city and county are taxed for the support of the State institution.

Mr. KETCHUM—I would ask the gentleman whether he does not know that now, every town in the State sustains its own lunatics except two from each town that are received into the State asylums.

Mr. BERGEN—I know that every town in the State has a right to send them to Utica if it likes. The State have paid for the buildings and grounds, but they have not paid for the buildings and grounds in the county of Kings?

Mr. KETCHUM—Does not the gentleman know that very many other counties in the State have local institutions for the insane, and that every other county has to pay for the State asylums the same as the county of Kings?

Mr. BERGEN—The county of Kings pays at all events without receiving in return much benefit.

The question was put on the motion of Mr. Baker and it was declared lost.

Mr. LIVINGSTON—I offer the following resolution to come in at the end of the twenty-first section:

"But no law shall be passed granting the right to construct and operate a railroad within any of the cities, towns or incorporated villages of this State without the consent of the local authorities of such city, town or village and also the consent of the owners of at least one-third in value of the property as fixed by the assessment roll of the previous year, on that portion of each street through or over which the same shall be constructed, or in case the consent of such property owners cannot be obtained, then without the consent of the general term of the supreme court of the district in which said road shall be located; such consent to be obtained and authenticated in such manner as the Legislature shall by general law for that purpose provide."

Gentlemen of the Convention will observe that in this amendment, which I now propose, is contained simply the proposition upon which the Convention voted before and which it adopted in the section which was subsequently struck out. It provides simply that no railroad shall be built in cities or in incorporated villages of the State without the consent of the local authorities which is deemed on all hands to be proper, and which, it has been said, is according to the present state of the law. However that may be, by putting it into the Constitution we will guard against a repeal of the law by the Legislature if it now exists in that form; so that, in no case will any body be able to construct such railroads without obtaining the consent of the municipal authorities. This I understand to be deemed proper by all the gentlemen who have spoken in favor of striking out the amendment of the gentleman from Onondaga [Mr. Comstock], who is not now present. This proposition then provides that the consent of the owners of at least one-third of the property in value on the lines of the proposed road shall be obtained. The original section requires the consent of the owners to one-half the property in value, but I have reduced it to one-third, so as to meet the objection of gentlemen who thought that one-half was too large a proportion. In case that consent cannot be obtained, application is to be made to the supreme court to obtain consent. All that portion of the article relating to the sale of the franchise at auction has been left out of my amendment. As I said before, each one of these propositions which I now propose, was adopted by this Convention by a separate vote; but they were stricken out on the vote to strike out the whole article. I hope, therefore, that the Convention will adopt my amendment, which is only intended to protect us against what it is admitted would be an improper, unjust action on the part of the Legislature. It will also avoid the necessity, under which I would feel myself, to move to lay on the table the vote adopting the whole, in order to preserve my motion and reconsider the vote by which the article was stricken out.

Mr. BERGEN—I move the same amendment to this that I moved on a previous occasion, to insert after the words "cities or incorporated villages," the word "towns."

Mr. LIVINGSTON—I have no objection to that. I accept it.

Mr. ALVORD—I voted in Committee of the Whole, and voted here when the proposition came up, to strike out this section, and I see no reason to change my view in the altered proposition of the gentleman from Kings [Mr. Livingston]. That proposition is liable to this serious objection, that it results in making a perfect monopoly of the roads now in existence in the cities where these corporations control, to a very considerable extent, through the aggregation of their capital and the influence growing out thereof, the city, village, or town authorities. It is a very dangerous provision to put in the fundamental law of the State, and I trust that this whole matter will be left to the Legislature.

Mr. LIVINGSTON—I ask to be permitted to answer the gentleman.

The PRESIDENT—No objection being made the gentleman may proceed.

Mr. LIVINGSTON—It was argued by the gentleman from Onondaga [Mr. Alvord] that there was no necessity for this article, for the reason that the existing law required that the consent of these local authorities should be obtained. Now, if that is the case, the objection urged by the gentleman from Onondaga applies now to the existing law quite as well as it does to the amendment that I proposed.

Mr. ALVORD—Will the gentleman allow me to ask him a question?

Mr. LIVINGSTON—Certainly.

Mr. ALVORD—It is whether if you put this

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provision in the Constitution and it should become perfectly obvious that the local authorities were under the control of the existing roads, the Legislature would have the right to pass a law to obviate the difficulty?

Mr. LIVINGSTON—Well, sir, I understand that there can be abuses under any Constitution or any law. I would answer that question by asking another, whether if this should go into the Constitution the Legislature would then have the power to grant away the franchises of our cities without their consent? It is to meet that evil that I propose this amendment.

Mr. WAKEMAN—I voted against striking out the seventeenth section for the reason that I believed that it would be better to prohibit the Legislature from granting railroad charters in cities or villages without the consent of the local authorities. I shall vote for the amendment now proposed for the reason that I believe that, notwithstanding there may be danger that the present corporations in cities will try to prevent any further construction of roads, yet I believe that the evil which has grown out of the chartering of these roads, is so much greater that it would be best to put a stop to it. Every winter we have the spectacle of the granting of charters for railroad schemes in the city of New York and of parties waiting here as lobbyists on one side and on the other, and we have this scene enacted over and over again at every succeeding Legislature. Now, let us send this thing home to the local authorities, and say to them, "If you want railroads, consent to have them, and the Legislature will have the power to give them to you when you ask for them." If, on the other hand, they do not desire these railroads, why let them so decide through their local authorities. I think the matter should be left to the local authorities, and for that reason I shall vote for the gentleman's amendment, taking the risk of any evils that may result from the adoption of the provision.

Mr. ROBERTSON—I offer the following substitute, with a view to meet some of the difficulties suggested here in regard to the control of the local authorities: To the end of the twenty-first section add:

"Nor shall any general law be passed by the Legislature to permit the construction or operation of any railroad within the bounds of any city, town or incorporated village, without requiring therein the consent of the local authorities of such city, town or village, and of the owners of one-third of the assessed value of the land contiguous to the line of such road, or the authority of the general term of the supreme court of the district in which such road is to be operated, and prescribing therein the mode of obtaining such consent or authority."

In this substitute it is provided that, the consent of the local authorities shall be obtained, together with that of the owners of one-third of the property (in value) contiguous to the line of such road, taking the same measure in regard to the consent of the owners of the property as is contained in the proposition of the gentleman from Kings [Mr. Livingston], or the assent of the general term of the supreme court of the district in which such road is to be operated. And I do this because, heretofore, in the discussions which have arisen at various times in regard to the laying of railroads in cities, an objection was suggested which this is calculated to meet, and I think it does remove the difficulty, and leave it to the Legislature to decide whether the consent of the general term shall be obtained, or the consent of the local authorities of the district, and it does away with all the difficulties which gentlemen apprehend from the possession of the consciences and free will of the local authorities by railroads already existing. And if the Legislature, in their discretion, think that the local authorities are not to be trusted, it can be transferred from them to the supreme court, and the decision be left to a body of men who are not necessarily connected with or influenced by the existing roads.

Mr. BERGEN—Is an amendment to the substitute now in order?

The PRESIDENT—An amendment to the substitute is in order.

Mr. BERGEN—I would move to add after the word "cities" the word "towns."

Mr. ROBERTSON—I accept that amendment. That word was omitted by mistake.

Mr. LIVINGSTON—If I understood the difference between the proposition of the gentleman from New York [Mr. Robertson] and my own proposition I would probably accept his, but I do not see that there is any difference.

Mr. ROBERTSON—The difference is that the proposition of the gentleman from Kings [Mr. Livingston] is the proposition which was contained in the original clause, which required the alternatives to be merely the consent of the property owners or the authority of the general term of the supreme court, but the consent of the local authorities was required as indispensable. In the substitute which I offer I propose to make the consent of the local authorities or the consent of the owners one alternative, and the authority of the general term of the supreme court the other, so that the Legislature will elect between the two which shall give the sanction for the laying of the road.

Mr. LIVINGSTON—With that explanation, I prefer my own amendment for this reason: I conceive that the cities have an interest in these franchises which should not be taken away without their consent. I think they have quite as much interest in these franchises as the owners of the property have, and while I would be very willing to leave it to the general term as a practical question, yet, as a matter of principle, I think the consent of the city authorities should be obtained.

Mr. M. I. TOWNSEND—The substitute of the gentleman from New York [Mr. Robertson] presents this question fairly. If the Convention designed by their action not to have railroads built improvidently in the cities, villages and towns, their object will be attained by the adoption of his proposition. If they design to have no more railroads built, their object will be attained by adopting the proposition of the gentleman from Kings [Mr. Livingston]. Now, it depends entirely on what we want. If we wish to have the present monopolies retain their monopoly for all coming time, then the consent of the local authorities to the building of these railroads should be made indispensable; but if the object of this Convention is

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to have railroads built only when the needs of the localities require them, then the proposition of the gentleman from New York [Mr. Robertson] is an entirely safe one, because it makes it necessary to have the assent of the general term of the supreme court, elected by the electors of the locality, if the consent of the local authorities cannot be obtained. Now, although I deem it entirely unnecessary to put any provision of this kind in the Constitution, yet, I am entirely satisfied with the proposition of the gentleman from New York [Mr. Robertson], as being a proposition likely to secure the great object of accommodating the people with these railroads whenever they desire such accommodation.

The question was put on the substitute offered by Mr. Robertson, and it was declared lost.

Mr. S. TOWNSEND—I hope, sir, that the amendment proposed by my friend from Kings [Mr. Livingston] will be sustained by the Convention. It recognizes the principle that the majority of the Convention are in favor of the principle of allowing the local authorities to determine this matter, and I trust that, before this Convention disperses, we shall have something that will allow the government of our cities to be more conservative than they have been, but even as they have been, the gentleman from Onondaga [Mr. Alvord] is entirely wrong in saying that more confidence is felt by the constituencies in the Legislature than in the local authorities. Bad as the local authorities may be, they are more amenable to the local public opinion than the Legislature. A man can meet an assistant councilman or alderman in the street and tell him to his face that he has done wrong, or, if he please, that he is a rascal. [Laughter.] Whereas it would cost forty dollars to have that privilege here. The gentleman from New York [Mr. Robertson] has spoken of the Constitution of 1846. Sir, one of the great features of that Constitution was decentralization; but, sir, having said what I have said upon this subject, I do not longer desire to detain the Convention.

Mr. ROBERTSON—The question has been put to me in reference to my substitute, "who are the local authorities of a town?" and I can only hand it over to the author of the phrase [Mr. Livingston].

Mr. LIVINGSTON — I must refer the question to the gentleman from Kings [Mr. Bergen] who proposed the amendment.

Mr. ROBERTSON—I do not understand that there are any town local authorities.

Mr. S. TOWNSEND—If I may volunteer an answer, sir, I would say that they are the board of town officers known to the law, though not incorporated.

Mr. ROBERTSON—I would suggest further, that, this proposition seems to take it for granted that railroads are only laid on streets or across streets; whereas they may be laid over lands where there are no streets. This provides for the consent of the owners of property on the line of the street over which or across which the railroad passes; but it does not provide for the case of a railroad laid where there are no streets.

Mr. LIVINGSTON — If the gentleman will propose an amendment in that respect I will adopt it.

Mr. ROBERTSON—Then I suggest that it be amended by the phrase, "contiguous to the line of railroad."

Mr. E. BROOKS—I move the previous question upon the amendment and the article.

The question was put on the motion of Mr. E. Brooks for the previous question, and it was declared carried.

Mr. LIVINGSTON—Mr. President—

Mr. ALVORD—I would call the attention of the Chair to the fact that the hour of two o'clock has arrived.

The PRESIDENT—It had not arrived when the Chair put the motion.

The hour of two o'clock having arrived the PRESIDENT announced that the Convention would take a recess until seven P. M.

EVENING SESSION.

The Convention re-assembled at seven o'clock.

Mr. ARCHER — I offer the following as a privileged resolution,

The SECRETARY read the resolution as follows:

Resolved, That Hiram T. French, heretofore appointed assistant doorkeeper of this Convention, be detailed to perform the duties of assistant sergeant-at-arms.

The question was put on the adoption of the resolution offered by Mr. Archer, and it was declared carried.

Mr. ALVORD—I move that when the Convention adjourn, it adjourn to meet on Monday evening, at seven o'clock.

Mr. BARTO—Make it Tuesday at ten o'clock.

SEVERAL DELEGATES—No, no!

Mr. BEADLE—I propose to amend the resolution by making it ten o'clock to-morrow morning.

The PRESIDENT—That is already the present order.

Mr. BEADLE—I understood that if we adjourn to-night our next session will be on Monday evening. My objection to adjourn until Monday evening is this: A number of delegates are here, and there is a still larger number in the city who, like myself, have remained here for the purpose of transacting the business that devolves upon us. I think it is due to those of us who sit here and stay away from our homes and business, that we be permitted, if we so desire, to transact business to-morrow as well as any other day in the week.

Mr. ALVORD—I had supposed it was evident to all persons here that there would be no quorum present, and that any one who should raise that question would put us in a dilemma that would be unpleasant, and for that reason I offered the proposition; but upon the suggestion of the gentleman from Chemung [Mr. Beadle] I am entirely willing to stay here to-morrow, and therefore take the liberty of withdrawing the motion.

Mr. GOULD—I renew the proposition. It is certain we cannot hold a session to-morrow.

Mr. S. TOWNSEND—Will the gentleman from Columbia [Mr. Gould] please state why we cannot.

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Mr. GOULD—Because there were not fifty members here to-day, and there will not probably be more than forty to-morrow.

Mr. S. TOWNSEND—Well, Mr. President, considering that we have not had a quorum present to-day, I think we have got along very well by the practice of courtesy toward one another in respect to raising that question, and I think we can get along equally well by exhibiting the same courtesy to-morrow. Who is responsible in case there are not more than forty members here to-morrow? We can go on with our business to-morrow with whatever number is present, and if the question is raised as to our having a quorum, let the responsibility of blocking our proceedings rest with him who raises the question. We have been doing business here through courtesy, and we have gone on very well; and if with courtesy we succeed so well with sixty members present, I think that, with the same courtesy exhibited with forty present, we shall do much better. [Laughter.]

Mr. M. I. TOWNSEND—When the wrath of God was threatened upon a certain city [laughter] the servant of God pleaded with the Deity, and it was found that the city could be saved by a certain number of righteous men. Then it was afterward found that it could be saved by a smaller number, and then by a still smaller number; and as I have no doubt we shall find a number here to-morrow sufficiently large to have saved Sodom [laughter], I think it is better for even that number of good men to go on and transact the business, than to have our business stopped. This has become an intolerable burden upon men who have any thing to do. I have tried to forbear from my business to come here and work this thing out; but you cannot hold on always, and I trust that such as are willing to remain here and attend to business, will be allowed to do so, and that no question will be raised as to our having a quorum. I have no doubt that there will be a quorum (presumptively) to-morrow. [Laughter.] Let that presumptive quorum go on and transact the business, and if the rest of the Convention do not desire to attend, when they do arrive they will find all the work done for them.

Mr. GOULD—I have never heard a faith so great in any man before, and in view of that faith and in compliment to it, I withdraw the motion. [Laughter.]

The Convention again resumed the consideration of the report of the Committee on the Powers and Duties of the Legislature as amended in Committee of the whole.

The PRESIDENT announced the pending question to be on the amendment offered by Mr. Livingston, to section 20, by adding thereto the following:

"But no law shall be passed granting the right to contract and operate a railroad within any of the cities, towns or incorporated villages of this State without the consent of the local authorities of such city, town or village; and also the consent of the owners of at least one-third in value of the property as fixed by the assessment roll of the previous year, on that portion of each street through, or over, which the same shall be constructed; or, in case the consent of such property owners cannot be obtained, then without the consent of the general term of the supreme court of the district in which said road shall be located; such consent to be obtained and authenticated in such manner as the Legislature shall, by general law, for that purpose provide."

The question was put on the adoption of the amendment offered by Mr. Livingston, and it was declared lost.

Mr. SEAVER—I move a reconsideration of the vote just taken.

Objection being made to the immediate consideration of the motion of Mr. Seaver, it was laid on the table, under the rule.

The PRESIDENT announced the question to be on the adoption of the article as amended.

Mr. E. A. BROWN—Mr. President—

The PRESIDENT—The previous question having been ordered, the gentleman is not in order.

Mr. M. I. TOWNSEND—I did not understand the motion for the previous question to apply to any thing except the pending proposition.

The PRESIDENT—The gentleman from Richmond [Mr. E. Brooks] moved the previous question on the article.

Mr. ALVORD—I move a reconsideration of the vote ordering the previous question.

The PRESIDENT—The Chair decides the motion out of order, the business under the order for the previous question, having been partly executed.

The question was then put on the adoption of the article as amended, and it was declared carried.

Mr. SEAVER—I move a reconsideration of the adoption of the article, and ask that the motion lie on the table.

The PRESIDENT—The motion will lie on the table under the rule.

The Convention then resolved itself into a Committee of the Whole on the report of the Committee on Future Amendments and Revision of the Constitution, Mr. VERPLANCK, of Erie, in the chair.

After reading document No. 108, being the article reported by the committee, the SECRETARY read the first section, as follows:

SEC. 1. Any amendment or amendments to this Constitution may be proposed in the Senate or Assembly; and if the same shall be agreed to by a majority of the members elected to each of the two houses, such proposed amendment or amendments shall be entered on their respective journals, with the yeas and nays taken thereon, and be referred to the Legislature to be chosen at the next general election when Senators shall be chosen, and shall be published for three months next previous to the time of making such choice, and if in the Legislature so next chosen as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit such proposed amendment or amendments to the people, in such manner and at such time as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of

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the electors voting thereon, such amendment or amendments shall become part of the Constitution.

Mr. ALVORD—I would like to have some gentleman suggest an amendment to meet a difficulty to which my attention has been called by the gentleman from Ontario [Mr. Folger]. As we have no general election for Senators under the Constitution as we have revised it, but have only one-half of the Senators elected each alternate two years, the language of the section, as reported, is inappropriate.

Mr. HALE—I would suggest to the gentleman from Onondaga [Mr. Alvord] that the language is not "at the next general election of Senators," but "at the next general election at which Senators are chosen." That would be a general election.

Mr. ALVORD—The idea was, unquestionably, on the part of the committee in framing this language, to have a new Legislature speak for the second time upon the proposition as originally proposed by the first Legislature, so that the views of the people could be heard on the subject through the new Legislature. But as we are now situated, with our Senators going out of office one-half at a time instead of the whole number, it seems to me that the benefit sought is entirely done away with. I think it might be well enough to strike out that portion of the section. I move to strike out the words "to be chosen at the next general election at which Senators shall be chosen," and leave it to be referred to the next Legislature.

Mr. VAN CAMPEN—That would as effectually carry out the general aim of the provision as if both branches were elected. The proposition for an amendment of the Constitution would be involved in the next election after it had passed the Legislature, instead of being involved in the election of both branches of the Legislature, the people could give the expression of their views upon an amendment in the election of the lower branch.

Mr. ALVORD—In order to avoid the necessity of making a double motion, a further amendment will be required in the ninth and tenth lines. It is to strike out the words "so next chosen as aforesaid," and insert the word "next" before the word Legislature, so that it will read "and if in the next Legislature such proposed amendment," etc.

Mr. E. A. BROWN—When the article was framed, if I recollect aright, the question as to how the Senators should be elected was not settled. Under the present Constitution it is impossible to perfect an amendment to the instrument until after an election of Senators has intervened. These elections take place every two years. In view of the various propositions that were made to have Senators elected every year, or every two years, as the case might be, this language was adopted, but if it is deemed satisfactory to the Convention that a constitutional amendment may be passed one year, and be submitted to the Legislature immediately following, and then be submitted to the people for adoption, the amendment here proposed to the section under consideration would accomplish that result. The same thing would be accomplished now if we have one-half our Senators elected one year and another half the next year. The same thing results from the language used in the present clause if there is an election of Senators every year.

Mr. ALVORD—The election for Senators takes place every two years. We have so altered the Constitution in that regard that it has been agreed that we elect Senators for four years, one-half to be elected every two years. At the first election for Senators under the Constitution, the Senators from the districts having odd numbers are to be elected for two years, and those from districts having even numbers for four years, and thereafter it is required that each two years an election shall be held for half of the Senate.

Mr. E. A. BROWN—I had forgotten the fact that the tenure of office for Senators had been extended to four years. As the article is framed, it will require the intervention of a senatorial election after a constitutional amendment is first proposed before it can be passed upon by a second Legislature. Under the proposed amendment it can be done in a single year. The section as framed was designed to postpone the time in which an amendment might be perfected, so that it could receive the sanction of two succeeding Legislatures, one of which should be after a new election of Senators, as is required by the present Constitution. It leaves the subject precisely as it is now. For myself, I have no choice in regard to it, being well satisfied to have the provision so framed that two immediately succeeding Legislatures can perfect such an amendment and submit it to the people, instead of making it necessary to defer action by a second Legislature for one year, more, as might otherwise sometimes be the necessary result. The amendment proposed by the gentleman from Onondaga [Mr. Alvord] will make it possible to perfect an amendment of the Constitution under certain circumstances one year sooner than might be done under the proposed article. Such would be the case when an amendment should be proposed in the first year after an election of Senators, as now.

Mr. ALVORD—I cannot see any possible reason why the clause should be retained when only one-half the Senators of the State are chosen at any senatorial election. It might be well, in the present Constitution, when all the Senators expressing the views of the whole State, so far as that branch of the Legislature is concerned, are elected at the same time. But here, there would be an expression of the views of only one-half of the State, so far as the Senate is concerned, and for that reason, it seems to me that, no advantage is to be gained by letting the question of an amendment to the Constitution go over a general election at which Senators are elected, as is provided in the present Constitution; for certainly the people, speaking through the members of a new assembly, would have all the opportunity necessary to give expression to their views upon the amendment of the Constitution which had passed the previous Legislature.

Mr. VAN COTT—The change in the phraseology requires another change in the section which I have submitted to the gentleman from Onondaga [Mr. Alvord], and which I understand

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he accepts as his motion It is to strike out in the seventh and eighth lines the words "when Senators shall be chosen," and insert "thereto," and then, after the word "previous" in the eighth line; strike out the words "to the time of making such choice."

Mr. ALVORD—I am entirely satisfied with that amendment. Perhaps it is better than the one I suggested.

Mr. E. A. BROWN—I would like to hear the section read as it is proposed to be amended.

The SECRETARY read as follows:

"And be referred to the Legislature to be chosen at the next general election when Senators shall be chosen and shall be published for three months next previous thereto; and if in the Legislature so next chosen as aforesaid, such amendment or amendments" etc.

Mr. ALVORD—The words "when Senators shall be chosen" are to come out.

Mr. E. A. BROWN—It seems to me that the word "thereto," suggested by the gentleman from Kings [Mr. Van Cott], makes the section rather awkward.

Mr. VAN COTT—It reads thus: "shall be referred to the Legislature to be chosen at the next general election, and shall be published for three months next previous thereto; and if in the Legislature," etc.

Mr. ALVORD—The next Senate is not chosen at a general election—only a part of the Senate; therefore, it should be left to the next Legislature. It is sufficient, without any reference to a general election or any thing of the kind.

Mr. HALE—I hope the amendment will not be adopted. I am disinclined to favor any proposition which will make an amendment to the Constitution any more easily effected than it is now. I can see nothing in the reason suggested by the gentleman from Onondaga [Mr. Alvord]. The theory of this section, as it now is, is, that, the people shall have an opportunity to change their representation, not only in the Assembly but in the Senate, before a change in the Constitution is effected. Now the gentleman from Onondaga argues that, because all the Senators are not to be chosen at the same election under the Constitution we propose, therefore, this clause would be of no use. I submit that there is nothing in that argument. It is true that the people will have no opportunity to change the entire Senate; but they can change one-half the Senate between the time of the first and the second passage of the amendment by the Legislature. The effect of the amendment proposed by the gentleman from Onondaga is to require a change in the Assembly while the Senate may remain entirely unchanged. If the Constitution we frame shall be adopted, which provides that one-half the Senators shall be elected each alternate two years, why should we not continue the existing safe-guard in the Constitution, and have the concurrence of two Senates, differently constituted, in favor of a proposed amendment to the Constitution, as well as of two Assemblies, differently constituted, before the people are called upon to vote upon a proposed amendment.

Mr. MERRITT—If the action of the second Legislature to be chosen were to be final in making an amendment to the Constitution under this article, there would be pertinency in the remarks of the gentleman from Essex [Mr. Hale]. But the object of the article is simply to prepare an amendment to be submitted to the people themselves, and they are to decide whether the amendment to the Constitution proposed shall be made. The Legislature is the agent of the people. They can only initiate and prepare the amendment for the final action of the people. There is no necessity for this clause, with the view of getting an expression of the people upon the merits of the proposed amendment, which can be just as well passed the second year as after the new election of Senators; for the people can speak their sentiments in the election of the Assembly. Of course there must be the concurrent action of the two branches of the Legislature, but if you get an expression upon any question of public importance upon which the people desire the Legislature to act, in the election of members of the Assembly, it is all that is needed. The expense or the difficulties that would grow out of the submission of any important amendment are not such but that the people would be willing to incur it. I am very sure that the Legislature would not initiate an amendment and incur the expense of submitting it to the people, unless they demanded it. I am therefore, in favor of the amendment proposed to the section by the gentleman from Onondaga.

Mr. ALVORD—I merely wish to say a few words in answer to the gentleman from Essex [Mr. Hale]. It is not a very violent supposition, in view of what we are accomplishing in the Convention, that, our Constitution being accepted by the people, and we electing alternately our Senators, as is proposed to do, this state of things may exist: the Senators who remain in the Legislature, may, perhaps with one or two exceptions be in favor of a certain proposition to amend the Constitution to be submitted. They still continue to represent a large majority of the people of their localities; whereas Senators, who come in, may undertake to make that particular thing a matter of politics in their locality, and thus succeed in being elected by a very small majority in their districts; so that the result would be that, with the aid of two or three of the Senators remaining, the new Senators would be enabled to defeat the proposition for an amendment to the Constitution, although they actually represented but the merest minority of the people of the State.

Mr. HALE—Will the gentleman allow me to call his attention to this fact: if I recollect the provision in regard to the organization of the Legislature, the election of Senators in a given year is to be in alternate districts over the whole State.

Mr. ALVORD—I understand that perfectly. But the object, and the only object urged for the putting in of this provision requiring that there should be an abeyance in the final action of the Legislature until there should be a senatorial election, was that the lower house, the Assembly, was changed, and that there should also be a complete change in the Senate as well, so that both bodies should come fresh from the people to

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speak the people's sentiments in reference to the proposed amendment. All that is secured by retaining this provision as reported by the committee, is expression of the opinion of one-half of the smaller body of the Legislature which comes fresh from the people; and we do not get them from the body of the people, we only get them from different localities in the body of the people. Therefore, in my opinion, it is unnecessary and unwise, and it strikes me that there should be no restriction in regard to it any further than that, we shall submit the proposed amendment to two successive Legislatures before sending it to the people for ratification.

Mr. M. I. TOWNSEND—We can now amend our Constitution, if the exigency requires it, in a little less than two years. We have seen a time in this State when certainly my friend from Essex [Mr. Hale] and myself desired to have the Constitution amended. We have amended it during the progress of the war in a way which I trust was entirely satisfactory to my friend from Essex as it was to myself, and by which amendment soldiers in the field in defense of their country and its integrity were allowed to vote, who, by the Constitution as it previously existed in this State, could not have voted. We have found it necessary, at one time, to amend the Constitution since the year 1846, in reference to important and pressing financial measures. It does seem to me that we shall often need to make this amendment, at least we are liable to need to amend the Constitution within a period shorter than the Constitution could be amended if we followed the letter of the report of the committee. I am entirely satisfied that it would be sufficient to have the question submitted to the people of the State, after the preliminaries of passing two successive legislative organizations by a majority, as required in this proposition of the committee, even though one-half of one house had not been changed, or the same house has to pass upon the measure after the lapse of a year, as the amendment has certainly to pass one new house lately elected by the people, and which has been elected in view of the fact that the amendment was pending. Now, it seems to me we shall be entirely safe if we delay putting more shackles upon it, that we really may have our hands tied—may find ourselves powerless at a time when all feel that a majority of the people of this State, and the public interests require that a proposed amendment to the Constitution should be made. I think that we had better make the change.

Mr. RUMSEY—I should like to hear the amendment read as it now stands.

Mr. ALVORD—It is to strike out the words "to be chosen at the next general election when Senators shall be chosen," leaving it to read "be referred to the next Legislature, and shall be published for three months prior to the next general election, and if in the next Legislature such proposed amendments shall be agreed to," etc.

Mr. E. A. BROWN—The more I hear this amendment read, and the modifications of it, the less I am satisfied with them. Sir, this article was framed almost literally in accordance with the language of the present Constitution. There was a little change in the phraseology at this place to meet a supposed change that might be made in regard to the election of Senators. I entirely agree with my friend from Essex [Mr. Hale] that the proposed change is not desirable, not called for by any necessity. The gentleman from Rensselaer [Mr. M. I. Townsend] says there have been times when we all desired an amendment to the Constitution, in regard to allowing soldiers to vote. Had we any difficulty on that subject? Was there any unnecessary delay as the Constitution now stands in perfecting that amendment?

Mr. M. I. TOWNSEND—Had the Constitution not been changed, Horatio Seymour would have been Governor of this State to-day, instead of the present incumbent, and so he would have been in 1864.

Mr. BARTO—It might have been better for the State if he had been. [Laughter.]

Mr. M. I. TOWNSEND—I am only debating the subject from a republican stand-point. [Laughter.]

Mr. E. A. BROWN—Did any difficulty grow out of that case under the present Constitution? Was there any injurious delay in perfecting the amendment allowing soldiers to vote, or in regard to the question of amendment on the subject of finance to which the gentleman refers? Was not that amendment effected in due season for all practical purposes, and were not the public interests well subserved in effecting the change that was made, so far as the time was concerned? Was there any delay in making amendments under the Constitution that was detrimental to the public interest at all? And has there been any case, and can the gentleman point to any case where it has seemed that the public exigency required an immediate and speedy amendment to the Constitution, that the amendment has not been perfected in due time, and without injurious delay under the present Constitution? Sir, it seems to me proper to regard the question of amending the fundamental law of the land as a grave and solemn matter, and one that should be carefully considered, and well considered, by the whole people, and deliberated upon for a sufficient length of time to enable them in all parts of the State to form and express their opinion upon it, and to understand it in all its bearings. Now, sir, there is no delay proposed by the article as framed, beyond the delay that would be necessary under the existing Constitution, as I have before stated. If, under the proposed Constitution, we elect one-half of the Senators from different sections of the State, they certainly will represent the views of one-half of the people of the State. We certainly have one-half of the body fresh from the people, and prepared to speak their sentiments upon the subject. If an emergency should have required, say last year, a constitutional amendment, and it passed the Legislature, then there can be no possible delay about it whatever under the clause as reported by the committee, because the present Legislature could act upon it, and then the question would be submitted to the people as soon as the Legislature should designate, and no possible emergency could arise which would delay the progress of the constitutional amend-

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ment more than about a year, the same as under the Constitution as it is. If an amendment was proposed to the present Legislature, and it should adopt it, at the end of two years it could be acted upon by a second Legislature, and submitted to the people for their ratification. In no event need there be, under this article, more than two years' delay required in securing a constitutional amendment. If the change is to be made, as suggested, I think there should be interlined the word "succeeding," before "Legislature."

The CHAIRMAN—Does the gentleman propose that amendment?

Mr. E. A. BROWN—No, sir. I am finding fault with the amendment as it is proposed. [Laughter.] Every thing that is desired to be accomplished can be accomplished by striking out the words "when Senators shall be chosen," at the end of the eighth line. As the amendment is proposed it is not good English.

Mr. ALVORD—The gentleman does not, I think, understand my amendment. I will read it so that he will understand it.

Mr. E. A. BROWN—I stated it just as it was proposed to be made at the end of the eighth line. It is to strike out "to" and insert "thereto," so as to make it read, "previous thereto the time," etc.

Mr. ALVORD—The amendment as it is now is this: "be referred to the next Legislature, and shall be published for three months previous to the next general election, and if in the next Legislature such proposed amendment or amendments," etc. That is the way it reads.

Mr. M. I. TOWNSEND—I do not wish to criticise the words of the propositions of gentlemen. I prefer to look at the section in all its aspects, as drawn by the committee and reported by them and designed to be adopted in the Constitution. It is not the fault of the committee that we are in this dilemma. It is the fault of the Convention that they have changed the tenure of office of Senators since the report was drawn and which has made this amendment necessary.

Mr. HALE—I ask whether the gentleman understands that, taking the article that we have adopted in regard to the organization of the Legislature, and taking this article precisely as it is, there will be any more delay necessary to get an amendment to the Constitution than there is now.

Mr. M. I. TOWNSEND—In all human probability there would be. I will explain to the gentleman if he will have the kindness to listen. We will suppose the proposed Constitution in operation, and next fall we elect Senators, half for two and half for four years, as the case may be, and the Assembly for the succeeding year. In the month of January next, a constitutional amendment is proposed. Now, if the provision in this article stands, a succeeding Legislature cannot take any action upon the amendment, because there would have been no change in the Senate and it would postpone action upon the matter for two years from the time the first action was taken, instead of postponing it for one year.

Mr. HALE—Will the gentleman allow me another suggestion? Suppose that under the existing Constitution an amendment should be proposed to the Legislature now in session, is it possible, under the Constitution as now existing, that it could be adopted by the people within two years?

Mr. M. I. TOWNSEND—As I understand the constitutional provision, it may be ratified by the next Legislature and may be submitted to the people of the State for their vote a year from the coming fall.

Mr. HALE—The gentleman is mistaken.

Mr. M. I. TOWNSEND—I so understand it. I believe that has been the practice in our State when constitutional amendments have been adopted.

Mr. E. A. BROWN—The gentleman [Mr. M. I. Townsend] is mistaken in regard to the provision of the present Constitution upon that subject. An amendment adopted by the present Legislature, cannot be acted upon by a Legislature until two years from now.

Mr. CURTIS—I would like to ask the chairman of the Committee on the Future Amendments of the Constitution, if it was the intention of the committee to change the present plan and enable the people to decide sooner, or was it the intention to continue the present practice?

Mr. E. A. BROWN—I will answer the gentleman by saying that the committee at the time they framed this article conformed it almost literally to the clause in the present Constitution. It was designed to adopt the section of the present Constitution provided the present rule in regard to the election of Senators should continue. If the change in regard to the election of Senators should be such that they should be elected every year then they designed to change this article in the present Constitution so that the amendment would be perfected the year next after it was proposed. That was the intention of the committee as I understand it, that an amendment should not be presented for the action of the second Legislature until after the election of Senators should take place, whether one-quarter, one-half, or the whole were elected at the general election when Senators were regularly chosen. Now, it is a fact that, under the present Constitution, it is impossible to perfect an amendment that is proposed in the Legislature immediately after the election of Senators until two years from that time. There must be an intervening election of Senators before the amendment can be perfected and so it will be in the proposed article as it now stands If the article is adopted as proposed by the committee, it will still require that an election of Senators should take place and the new Senators take their seats before the amendment can be perfected, although only half the Senators of the State be elected. It leaves it precisely as it now is, and as it has been for the last twenty years, with no change whatever in that respect. I insist upon it that no change is called for; that the fundamental law of the land should partake of that degree of stability of which we have heard so much said in this Convention; that no political party, however strong, in the State, should have the power by mere caprice and passion to uproot the Constitution of the State and substitute something in its place which the sober second thought of the

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people would not ratify. I am in favor of the Constitution in this respect as it has been for the last twenty years.

Mr. S. TOWNSEND—For the last forty years?

Mr. E. A. BROWN—Yes, for the last forty-five years.

Mr. KINNEY—I can see very readily why the present Constititution was framed as it is. Under the present provision, the people of the entire State can have an entirely new representation in the Senate every two years, and therefore it would give an expression of their views in the Senate under the provision of the present Constitution; but to have retained the provision which has been reported by the committee, they could only secure the expression of the opinion of only one-half of the people every two years. So I think it is very improper to leave in the provision, but think it would be much better to let the will of the people be expressed in the election of members of the Assembly. They can express their views if they wish, in opposition to any proposed amendment to the Constitution, by the election of a house of Assembly which would be in opposition to it, and just as effectually as they could if their views were represented in both branches of the Legislature. I think it is wise and proper to leave the subject to the action of the newly elected Assembly so far as any further expression is concerned, leaving, of course, the same Senate to act upon it a second time. Emergencies may arise, as they have arisen, when it would be very important for the interests of the people of the State to change the Constitution within two years and not be compelled to wait for three years, which may be the length of time that would be required if the section reported by the committee is retained. If an amendment were proposed to-day in the Legislature it is obvious under this section that the amendment could not be adopted under three years, but if we change the section so that the next Legislature may act upon the proposition which is proposed and adopted by this Legislature, then we can change our Constitution one year earlier, and the people will have an opportunity to act upon the question through their Legislature—at least through the Assembly branch of it, and then, after two successive Legislatures have acted upon it, the people can ratify the amendment, and that I look upon as the great safeguard against hasty legislation in the alteration of the Constitution, and hence I favor the amendment.

Mr. PROSSER—I agree with the gentleman from Tioga [Mr. Kinney] in this respect, that it is better the people of the State should have an opportunity within two years, of amending the organic law, provided two successive Legislatures have approved of the amendment, without reference to the time when the initiation is taken. Hence, I shall favor the adoption of the amendment.

Mr. SEAVER—I offer the following substitute for the amendment offered by the gentleman from Onondaga [Mr. Alvord].

The SECRETARY proceeded to read the amendment as follows:

Strike out the word "Legislature" in line six, all of lines seven, eight. nine and to. and including, the word "aforesaid" in line ten, and insert in lieu thereof: "next succeeding Legislature, and shall be published for at least three months next previous to the time of holding the general election preceding the meeting thereof, and if—

Mr. HALE—This body has been laboring for some considerable time in endeavoring to make a good Constitution. We commenced, as probably most of us will recollect, about the first of June last, and have been sitting most of the time since then.

Mr. PROSSER—Nearly nine months. [Laughter.]

Mr. HALE—We continued our sessions until the last of September, then met again in the middle of November and continued until Christmas time, and then on the fourteenth of this month, we reassembled. The question is whether we are of the opinion that the amount of labor we have bestowed in perfecting the Constitution which we are about to submit to the people, is bestowed in vain—whether our work is a failure, and it is desirable on account of the imperfection of what we have done, that it shall be changed frequently, and whether we shall repeal the rule under which we have acted in this State for the last forty-five years, by enabling changes to be effected in our Constitution easier than they have ever been made before. If my friends in this Convention have come to the conclusion that it is desirable that our work should be changed, and changed easily, I hope they will vote for the proposed amendment. But, Mr. Chairman, my opinion is that we will make a pretty good Constitution, and that there is no especial necessity for us to open the door for changes any oftener than heretofore. The Convention of 1846 spent only about three or four months in their work, and still they were presumptuous enough to provide that the people should not change the Constitution unless by the concurrence of two Legislatures, both branches of which were to be changed. Now, sir, we have determined that there shall be a general election of Senators once in two years, just as there has been for the last twenty years. There has been no change in that respect, except that instead of electing all the Senators at one election, we elect only half at each senatorial election. The argument sounds to me very strange, that, because the people cannot change all their Senators, they shall not have the privilege of giving expression to their views on the subject of the proposed amendment in the election of one-half of the Senators. I can see nothing in the Constitution, as we have adopted it, either in the erroneous provisions we have put in it, or in regard to the organization of the Legislature, which requires us to give the people an opportunity to tear to pieces our work any oftener than they have done it heretofore. I shall therefore vote to retain the section precisely as it has been reported by the committee, with substantially the same language that has been in the Constitution for the last twenty years.

Mr. SEAVER—I will call the attention of the gentleman from Essex [Mr. Hale], to the fact that, the proposed amendment leaves the Constitution in precisely the same condition in which it has

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been for the last twenty years. It might so happen, under the present Constitution, that an amendment would be proposed during the last year of the senatorial term, when it would be referred to the next Legislature. It requires the concurrence of only two successive Legislatures. Changing the mode of electing our senators so that one-half are elected every two years, it is impracticable to retain the provision as it stands in the present Constitution. It is inapplicable to the condition of things that we propose. So that we get the concurrence of two successive Legislatures to any proposed amendment, we get all that is desired. That is all that has been done heretofore, and is all that we should look for now.

Mr. CURTIS—The gentleman from Essex [Mr. Hale], will see that the words in the Constitution of 1846, "referred to the Legislature, to be chosen at the next general election of Senators," although substantially the same as the words used in the present article, mean a different thing. In the Constitution of 1846 the word "Senators" is used to express the Senate — the whole body of the Senate. If, therefore, the rule of interpretation which is applied to the Constitution of 1846 is now to be applied to this article, it will inevitably leave a space of some four years, possibly, to intervene; and thus even the opportunity to secure an amendment to the Constitution will be delayed for that time.

Mr. HALE—Will the gentleman allow me to call his attention to the language proposed by the committee, which I supposed to be precisely the language of the Constitution of 1846—I may be mistaken. It is, "at the next general election when Senators shall be chosen," which is once in two years.

Mr. CURTIS—It is substantially the same in the Constitution of 1846. It is referred to the Legislature to be chosen at the next general election of Senators." In the present article it is to be "referred to the next general election when Senators shall be chosen." Suppose that two Senators have died previous to the general election. Then at that election two Senators will be elected. In the sense of the present article, that is the next general election when Senators shall be chosen; and that would defeat the intention of the article as stated by the Chairman. Therefore, it is clear to me, as I supposed when I addressed my question to the Chairman, that the present article is prepared with a different view of the constitution of the Senate, from that which the article upon that subject as adopted by us, now provided, as the gentleman from Onondaga [Mr. Alvord], remarks; and consequently the necessity of some change in the phraseology of this article, in order to bring it to the precise point of the present Constitution, is evident.

The question was put on the adoption of the amendment of Mr Seaver, and it was declared lost.

Mr. SPENCER—I move to strike out of lines eight and nine the words "and shall be published for three months next previous to the time of making such choice,"

Mr. ALVORD—I suppose the question is now upon my amendment.

The CHAIRMAN—The other amendment having been disposed of, a second amendment is in order.

Mr. SPENCER—Do I understand that another amendment is pending?

The CHAIRMAN—There is an amendment pending, the amendment of the gentleman from Onondaga [Mr. Alvord].

Mr. SPENCER—I will withdraw my amendment until that is disposed of.

The question was put on the adoption of the amendment offered by Mr. Alvord, and, on a division, it was declared carried by a vote of 29 ayes, noes not counted.

Mr. SPENCER—I now move the amendment proposed by me, to strike out of lines eight and nine the words "and shall be published three months next previous to the time of making such choice.

Mr. FOLGER—I request that the section be read as amended, from the sixth line down to the twelfth.

The SECRETARY proceeded to read the section as amended.

Mr. SPENCER—I now make another trial. I move to strike out the words "and shall be published for three months next previous to the time of making such choice." Not that I have any objection to the publication of the notice, but that this clause, as it is here, is entirely useless for any purpose whatever. Ever since the history of the government, I believe, the laws have been published—all laws, all joint resolutions, and all other resolutions of the Legislature, in the usual form of published volumes; and that is all which this would require; and it would give no more notice to the people than is now given by the published volumes of the laws; so that this provision here, although it is in the present Constitution, adds nothing to the obligation of the public officers, or of the Legislature, to provide for giving notice to the people of a proposed amendment.

Mr. VAN CAMPEN—It seems to me that the gentleman from Steuben [Mr. Spencer] misapprehends the object of this publication, the object being to call the attention of the electors especially to the fact that the election involves the proposed amendment to the Constitution. This was the object, no more nor less.

The question was put on the amendment offered by Mr. Spencer, and it was declared lost.

There being no further amendment offered to section 1, the SECRETARY proceeded to read section 2, as follows:

SEC. 2. At the general election to be held in the year one thousand eight hundred and eighty-six, and in each twentieth year thereafter, and also at such other time as the Legislature may by law prescribe, the question, "Shall there be a Convention to revise the Constitution and amend the same?" shall be decided by the electors; and in case a majority of the electors voting on the question at such election, shall decide in favor of a Convention, the Legislature at its next session, shall provide by law for the election of delegates to such Convention.

Mr. BARTO—I move to amend this section by inserting after the word "majority," in the sixth

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line, the words "of the whole number," and strike out the words "on the question," in the seventh line, and insert the words "for members of Assembly," so that it will read, "and in case a majority of the whole number of electors voting for members of the Assembly at such election."

Mr. BELL—I would like to ask the gentleman from Tompkins [Mr. Barto] how he can ascertain the whole number.

Mr. BARTO—From the returns in the Secretary of State's office.

Mr. S. TOWNSEND—There is no general return made of the number of votes cast for members of Assembly. Substitute the word "Governor" and it will reach the same point, and, I think, will be an improvement.

Mr. CURTIS—It seems to me that the purport of this amendment is, that, there shall be a majority of the electors voting upon one question to decide another. The question to be submitted is, whether the people of the State wish a Constitutional Convention. The amendment proposes to provide that that question shall be decided by a majority of those voting for members of the Assembly. It seems to me there is no congruity between the two subjects.

Mr. E. A. BROWN—This question was raised before the committee, and has heretofore been suggested in Convention. Previous to 1821 no question was ever submitted directly to the people whether they would have a Convention to revise or amend their Constitution, or whether they would adopt a proposed Constitution, or an amendment to their Constitution. A proposition was made, an act passed by the Legislature, which resulted in submitting that question—of holding a Convention—to the people, in 1821. In that year the legal voters of the State numbered 259,387. At the previous election for the office of Governor (in 1820), 93,437 voted for that officer. The number was much less, of course, than the whole number of legal voters in the State, but the number of those permitted to vote for Governor was restricted by the property qualification required for the electors who voted for Governor. Of the 259,387 voters in the State in that year, 144,277 were all that voted upon the question of holding a Convention in 1821 to revise and amend the Constitution of the State—a little more than half of the whole number of electors, who were permitted to vote upon the question. The vote was 109,376 for, and 34,901 against, holding such Convention. In February, 1822, after the Convention had completed its labors and the result was submitted to the people for ratification—and it may well be supposed that it was deemed at that time a very important question for the people of this State, being the first time that it was ever submitted to them to adopt or reject any Constitution by the vote of the people—notwithstanding, in point of fact, sir, that it was an important question, and so deemed by the people of this State, the whole number of votes given upon the question of ratification or rejection of that Constitution was only 116,134—74,732 in favor of adopting the Constitution, and 41,402 against it. Now, sir, if the requirement proposed by the honorable gentleman from Tompkins [Mr. Barto] had been made the rule in 1821, that Constitution would have failed of being made or adopted by the electors of the State. In 1826 another important question was submitted to the people of this State in the form of an amendment to the Constitution, and that was removing the property qualification as applicable to the white voters of the State. It may be well supposed, and in point of historical fact is true, that that question agitated thoroughly the people of this State, but when the proposed amendment was perfected by the Legislature and submitted to the people, the question received, all told, 130,292 votes, viz.: 127,077 for, and 3,215 against, the amendment. As I said before, the vote for Governor in 1826 was restricted on account of the property qualification and amounted to only 96,074, but at the election of Senators in 1827—and always a less number of voters are called out in years when a Governor is not elected and when Congressmen are not elected—in 1827 the vote for Senators in the State was 177,809. The whole number of voters in the State was 308,000 in 1826, and 321,000 in 1827. Now, the next question that came before the people of the State, to which I will call attention, was the amendment proposed in 1833, and that was to authorize the Legislature to reduce the duties on salt. That was one proposition; another proposition was to allow the electors in the city of New York, to elect their own mayor. On the first question, as to the salt duties, the whole number of votes on the question of adopting that amendment to the Constitution was 101,152, viz.: 93,286 for, and 786 against, and the vote for Governor was 323,982 in the year before, in 1832; and the vote for Senators in 1833 was 186,540, making something over 85,000 more votes for Senators than were given on the adoption of this amendment. On the question of allowing the electors of the city of New York to choose the mayor of that city, submitted also in 1833, the vote was for the amendment, 48,977, against it, 1,963—a total of 50,913—or nearly 136,000 less than the vote for Senators at that election, and the senatorial vote was only forty-seven per cent of the legal voters of the State, as shown by the census. The question of calling a Convention to revise the Constitution submitted in 1845 received 213,257 for, and 33,860 against—total, 247,117; total vote for Senators the same year, 337,496, or 90,379 more votes for Senators than on the question of holding a Convention, and the vote for Senators was only about sixty-two and a third per cent of the legal electors of the State at that time. The total vote on adopting the Constitution of 1846, was only 313,964, while the aggregate vote for Governor the same year was 406,720, or 92,756 more than on the question of ratifying the proposed Constitution. And so I might proceed through the whole list, clear down to the present time. There has not been one single occasion when a vote was taken either on the question of calling a Constitutional Convention, of ratifying a proposed Constitution, or on the question of adopting or rejecting an amendment of the Constitution, when the aggregate vote so given has come anywhere near the aggregate vote for the principal officers of the State elected at the same

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election; sometimes not one-quarter, sometimes not one-half the amount, sometimes lacking one hundred or two hundred thousand. And so in regard to the very question submitted under the present Constitution, whether this Convention should be held—it lacked about 110,000 votes upon the question of calling this Convention, or not calling it; there were 110,000 votes less than on the question of Governor; and so in 1858, when the question was submitted to the people whether they would call a Constitutional Convention, or not, there were 135,166 in favor of it, and 145,126 against it.

Mr. S. TOWNSEND — Will the gentleman allow me to interrupt him? Do I understand him to say there were one hundred thousand votes short of the necessary vote last year; that on the question of calling the Convention there were one hundred thousand votes less than for the Governor? I understood him to say so.

Mr. E. A. BROWN—I will state again, and give the exact figures. The vote for Governor in 1866 was 719,195, and the vote on the question of Convention or no Convention was 609,219; about 110,000 less on the question for Convention or no Convention than on the question of Governor. In 1858 the vote for and against calling a Convention was 276,692. The vote for Governor was 544,816, nearly twice the number given on the question of a Convention. And so I might allude to the other amendments—that in regard to negro suffrage in 1860, and several other propositions to amend the Constitution. Not one single case is to be found, except in regard to Governor in 1820 and 1826, when the number of voters was limited by the property qualification, not one single case can be found where the vote of the people on the question either of a Convention to revise and amend the Constitution, or upon the adoption of a Constitution, or upon a proposed amendment to the Constitution, to be perfected by the Legislature and submitted to the people, reached any thing like the vote which was given for public officers at the general election; and the affirmative vote in no one case (except as I have stated as to the Constitution of 1846) amounts to a majority of those who voted on the question of Governor or Senators at the same election. The largest proportional vote that I remember of being ever given upon those questions was in 1860, against the change on the question of suffrage, and in 1866, on the question of calling this Convention; but in neither case, if I remember right—certainly not in 1866—was there a majority of those who voted for Governor in favor of calling this Convention. So that the amendment proposed, Mr. Chairman, would amount, practically, in all human probability, to an absolute prohibition of any amendment to the Constitution, however desirable it might be deemed by the people of the State; for, sir, I cannot conceive any likelihood, or any probability, that the people hereafter will turn out and vote more generally on such questions than they have done heretofore. It is not to be supposed that, hereafter, questions of more importance to the people of the State are to be submitted in this form, and for these purposes, than have been submitted heretofore on the same questions. The article in question is substantially that in the present Constitution; and for myself, I am decidedly in favor of retaining it. The committee who have considered this subject were some of them very strenuously in favor of it, and I do not know that any one has uttered any objection to it. I hope it will meet the favorable consideration of this committee.

Mr. S. TOWNSEND—The question at immediate issue is whether, what may be styled a fragmentary vote shall decide the important question of calling a Constitutional Convention, or whether a prescribed vote shall be required. It was undoubtedly the intention of the framers of the article in the present Constitution—although from a defect in the reported debates the fact is not fully stated—that no vote less than a majority of the largest vote of the people voting on other questions at the general election should sanction the important step of calling a Constitutional Convention once in twenty years, or at any other time the Legislature should submit the question. I have missed, in our scattered attendance and vacant seats this evening, the assertion which has been made fifty times heretofore in the Convention, that, we were making a Constitution for twenty years. That has been the constant cry. We are legislating now for twenty years. The theme this evening is to lessen the restriction even within three years, which is now the time of limitation which has been existing since 1821 for an amendment of the Constitution through the Legislature. I am in favor of the views expressed by the gentleman from Tompkins [Mr. Barto] in his amendment to retain all the barriers that now exist against too frequently placing even in as wise a body as this, or any other that may follow us, the power of shattering, assailing or changing the fundamental law, whilst the proviso exists; and it undoubtedly will as it has existed in the State for forty-six years, of allowing two Legislatures, with the approval of the people, to make general or special amendments. There is no necessity for putting the people to the expense and excitement—for there will be excitement in ordinary times attending the meeting of this body. We are assembled in extraordinary times, when, as I have said, the world appears to be infatuated. Without conventions nothing can be done. The base-ball clubs hold their conventions; the pugilists theirs. Every thing takes the form of a convention. We have got them over the Union now in ten or a dozen different States, in all their various forms and hues, and I consider it would be wise in us to retain all the barriers regarding and restraining these calls, that the framers of the instrument, under which we have lived for twenty years, meant should exist. I remember distinctly the fact, although it is not stated in the debates, that when that provision was adopted in 1846, there was a remark made to the circle sitting near myself on the floor, "We have fixed this question so that there will be no other Convention within twenty years, and not then unless it is required by a decided and emphatic vote of a majority of the electors of the State." What will be the effect, carrying out the ideas of the extremes—for that is the way we take to illustrate questions here—if we adopt the plan of the chairman of the committee, considering the carelessness of the people

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of the State and their neglect, at times, of the discharge of their duties as electors? Some excitement may sweep over them, for we are very much a people of one idea; it may be temperance, spiritualism or Fenianism, or secession, if you please, which latter I fervently hope we may never see again; and in the excitement of an election the whole question of the Convention would be lost sight of. I think this guard which has been suggested is necessary: that the vote upon the question should be at least equal to a moiety of the vote taken at the same time for the office of Governor, changing in that respect the language of the existing Constitution, which requires a majority of those "qualified to vote for members of the Legislature" in the State; and making this change simply on the ground that no return is made to the Secretary of State of the vote for members of Legislature. The Secretary of State's office greatly neglected their duty in submitting the question, whether the people would sustain a Convention or not, in not requiring of the county clerks a return of the number of votes cast in their county for the members of the Legislature. There is no such return found in the Secretary's office; the return is necessarily found in regard to the office of the Governor. Without that return, it was wholly incompetent for them to declare that the necessary vote had been given to call this Convention. My opinion, as heretofore expressed, is that it never was legally called. We have waived that matter, however. I have joined with others in meeting in Convention to modify and perfect the Constitution. Under this view I do not wonder that the committee of the Legislature last winter, some members of which have been honored with a seat on this floor, hesitated, as they did, for a long while, to report a bill in reference to the matter at all. All the legislation that was required, was on providing for the election of members. That is the language of the Constitution. The moment they went one jot beyond that, they went beyond their authority. I hope I am not intrusive in asking whether these doubts were not the cause of the long delay on the part of the committee of the Legislature in sanctioning the report, which I suppose they had from the Secretary of State's office, that the people had sanctioned a call for a Convention. I never deemed that they had sanctioned it. I always supposed the vote was seven thousand short. My figures show that. The gentleman's figures show as I understood him, more votes needed, making it still worse; and furnishing still more reason for hesitancy on the part of the Judiciary Committee in the last Legislature, and still more authority for delay. I hope we shall do nothing now, at such a period of excitement and disturbance generally, as we are in, and which unfortunately is likely to continue, to take down the bars, so that the Constitution and laws of this great Commonwealth can be too readily assailed in any way, either with good or evil intent. We must remember it has been said here—I have learned it since I have been in this Convention, and it is a pleasing fact for us of this State,—that the Constitution of 1777 — framed mainly by the gentleman whose stately pictorial official representation graces your left, sir — John Jay — was said to form the essential type of the Constitution of the United States in 1787. We know, sir, how reluctant the people were, as the chairman of the Committee has said here, to change essentially the Constitution of 1777 in 1821. We know how reluctant our people have been since 1846 to modify the Constitution when it has been proposed to do so. Several different attempts were made—one or two to call a Convention—another to modify the Constitution, and it has been voted down by large votes; and I believe that, as I have said before, a constitutional vote of the people of this State did not authorize this Convention; thus confirming my theory of their reluctance to organic changes. Still, we are here and must give some return, if practicable, for the time that has been spent, and the money that will be disbursed, before we get through. I should be glad to hear, if now in order, the views of the gentleman from Ontario [Mr. Folger], who knows the difficulties which surrounded the subject last year in the Senate, upon this point.

Mr. E. A. BROWN—My friend misapprehended me in what I said in regard to the vote for a Convention. The vote for the Convention was 352,854, and half of the votes for Governor about 359,000.

Mr. S. TOWNSEND—Then the gentleman confirms my view, that, under the proper construction of the article the vote was seven or eight thousand short of the prescribed vote. The immediate point is, shall we allow a small, fragmentary vote to control? Shall five thousand votes control the question, if there are no more cast, when there are probably nine hundred thousand voters in the State? Some may say that the people ought to attend to it. That may do very well in theory, but in practice it will not answer. The people often want guards and checks. Some will say confidently, "I don't want any of these; they are not needed;" but I have found by an experience, and a pretty active one, of over fifty years, that checks and guards were always required and useful, and it is our duty here to retain them in all their efficiency in the Constitution.

The question was then put on the adoption of the amendment of Mr. Barto, and it was declared lost.

Mr. HITCHCOCK—I move to strike out, in the second line, the words "eighty-six," and insert "eighty-eight," or insert "eight" in place of "six," so as to make the year in which the vote shall be taken 1888 instead of 1886.

Mr. KINNEY—In case a Convention should be ordered that would bring the Convention in the same year with the presidential election. I think we have seen enough of Conventions sitting during intense political contests.

Mr. M. I. TOWNSEND—It would be the odd year.

Mr. KINNEY—That will be the year in which the vote for or against the Constitution will be taken, and the next year it will be ordered, which is the year of political excitement.

Mr. M. I. TOWNSEND—It would occur in the odd year.

Mr. KINNEY—That is true; I am mistaken, and I withdraw my objection.

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The question was put on the adoption of the amendment of Mr. Hitchcock, and it was declared carried.

Mr. WALES—I move to strike out the words "eighty-eight" and "twentieth," in the second line, and insert "ninety-three" and "twenty-fifth," so that these recurring calls will come every twenty-five years instead of every twenty years.

The question was put on the adoption of the amendment of Mr. Wales, and it was declared lost.

Mr. M. I. TOWNSEND—I move that the committee rise and report the article to the Convention and recommend its passage.

Mr. GRAVES—I would like to have the article read and see what the amendments are.

The article as amended was read by the SECRETARY.

The question was put on the motion of Mr. M. I. Townsend, and it was declared carried.

Whereupon the committee rose and the PRESIDENT resumed the chair in Convention.

Mr. VERPLANCK, from the Committee of the Whole, reported that the committee had had under consideration the article reported from the standing Committee on Future Amendments and Revisions of the Constitution, and had gone through with the same and made some amendments thereto; and had instructed their Chairman to report the same to the Convention and recommend its passage.

There being no objection the report of the committee was agreed to, and the article referred to the Committee on Revision.

Mr. S. TOWNSEND—If it is now in order I wish to move to lay on the table a notice of reconsideration of the vote upon the motion of the gentleman from Tompkins [Mr. Barto].

The motion was laid upon the table.

The PRESIDENT—The next business is the report of the Committee on Cities, their organization, government and powers.

Mr. MERRITT—The Chairman of that committee is necessarily absent this evening, and did not expect this report to be taken up for consideration. He hoped, however, if it should come up, that it might be laid over for the evening session. I move that it be postponed until to-morrow morning at ten o'clock.

The question was put on the motion of Mr. Merritt, and it was declared carried.

Mr. C. L. ALLEN—I move that the Convention do now adjourn.

The question was put on the motion of Mr. C. L. Allen, and it was declared lost.

The PRESIDENT—The Convention will now resolve itself into the Committee of the Whole upon the report of the standing Committee on Education; Mr. M. I. Townsend, of Rensselaer, will take the chair.

Mr. M. I. TOWNSEND—I would ask to be excused from the fact that uncontrollable circumstances will compel my absence from the Convention in a few minutes.

The PRESIDENT—The gentleman is excused. Mr. Prosser, of Erie, will take the chair.

Mr. PROSSER, accordingly took the chair.

The SECRETARY then read the report of the Committee on Education and the funds pertaining thereto, at the conclusion of which

The first section was read by the SECRETARY as follows:

SEC. 1. The capital of the common school fund; the capital of the literature fund; the capital of the United States deposit fund; the capital of the college land-scrip fund, and the capital of the Cornell endowment fund as it shall be paid into the treasury, shall be respectively preserved inviolate. The revenues of said common school fund shall be applied to the support of common schools; the revenues of said literature fund shall be applied to the support of academies, and the sum of twenty-five thousand dollars of the revenues of the United States deposit fund shall each year be appropriated to and made a part of the capital of the said common school fund; the revenues of the college land-scrip fund shall each year be appropriated and applied to the support of the Cornell University, in the mode and for the purposes defined by the act of Congress donating public lands to the several States and Territories, approved July 2d, 1862; and the revenues of the Cornell endowment fund shall each year be paid to the trustees of the Cornell University for its use and benefit.

Mr. ALVORD—Mr. Chairman, it is evident that since we went into Committee of the Whole a considerable number of the members of the Convention have left. I therefore move that the committee do now rise and report progress, and ask leave to sit again.

The question was put on the motion of Mr. Alvord, and it was declared carried.

Whereupon the Committee rose and the PRESIDENT resumed the chair in Convenion.

Mr. PROSSER, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on Education and the Funds pertaining thereto; had made some progress therein, but not having gone through therewith, had directed their Chairman to report that fact to the Convention, and ask leave to sit again.

There being no objection, leave was granted.

Mr. WALES—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Wales, and it was declared carried.

So the Convention adjourned.

SATURDAY, January 18, 1868.

The Convention met at ten A. M., pursuant to adjournment.

The journal of yesterday was read by the SECRETARY and approved.

Mr. MERRITT—We are making such satisfactory progress in our work at this time that we may soon hope to be able to submit it to the people, and I now offer this resolution, looking to that end.

Resolved, That a committee of seven be appointed by the President, whose duty it shall be to examine into and report upon the following subjects:

1 The manner and form in which the Constitution as amended and adopted, shall be submitted to the people, for their rejection or adoption.

2. The publication of the amendments, or of the Constitution as amended.

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3. The form of the notice of election.
4. The form of the ballot or ballots.
5. The time at which the Constitution or amendments shall be submitted to the people.

The question was put on the resolution of Mr. Merritt, and it was declared adopted.

Mr. CURTIS—I hold in my hand a letter from the Secretary of the Georgia Constitutional Convention, requesting that he may be favored with a printed copy of the journals of this Convention in pursuance to which request I offer the following resolution:

Resolved, That the Secretary of this Convention be instructed to furnish one copy of the debates as they are printed, to the Secretary of the Georgia Constitutional Convention, in accordance with his request.

The PRESIDENT—The Chair would state to the gentleman from Richmond [Mr. Curtis], that if this resolution calls for any copies additional to those allowed by the rules it must be referred to the Committee on Contingent expenses. The resolution will take that reference for inquiry.

Mr. VAN CAMPEN—I offer the following resolution:

Resolved, That the Committee on Revision be instructed to strike out of the article on suffrage, and the qualifications to hold office, in section —, the words, "nor while a student of any seminary of learning," and report the article to the Convention.

Mr. VERPLANCK—Mr. President—

The PRESIDENT—The gentleman rising to debate the resolution, it lies on the table under the rule.

Mr. S. TOWNSEND—I desire to inquire of the Chair, at this time, in what position we stand in reference to an adjournment to-day; whether there is any resolution making it imperative upon us, when we adjourn, to adjourn to Monday evening?

The PRESIDENT — The Chair understands that under the existing rule, when the Convention adjourns to-day, it adjourns to meet on Monday evening at seven o'clock.

Mr. S. TOWNSEND—Will it be in order to move a reconsideration of that?

The PRESIDENT—No motion to reconsider is necessary.

Mr. S. TOWNSEND—I move that when this Convention adjourn to-day it adjourn to meet at ten o'clock on Monday morning.

Mr. CURTIS—Is it not the standing rule for the Convention to adjourn at twelve o'clock on Saturday?

The PRESIDENT—It is not; that portion of the rule is abrogated.

Mr. GRAVES—Is an amendment to the motion of the gentleman from Queens [Mr. S. Townsend] in order.

The PRESIDENT—It is not.

The question was put on the motion of Mr. S. Townsend, and it was declared carried.

Mr. CASE—In view of the difficulty that we have had in keeping a quorum present, and hoping that this may tend to obviate it, I offer the following resolution:

WHEREAS, Several members of the Convention have for some time past wholly absented themselves from its daily session, not participating in its deliberations; and

WHEREAS, It is presumed the causes that have heretofore will hereafter prevent their attendance and participation in the labors and duties devolving upon them as delegates; therefore

Resolved, That all delegates that are prevented from further discharge of the duties they owe their constituents, in attendance on the Convention, by circumstances beyond their control, be respectfully requested to resign their seats in this body, to the end that a less number will be required to constitute a quorum for transaction of business, thereby facilitating the completion of the important work remaining unfinished.

Mr. VERPLANCK—I think there is enough of this kind of thing in the Assembly, without having it here—

The PRESIDENT — The gentleman rising to debate the resolution, it lies on the table under the rule.

Mr. HALE—I move that this Convention do adjourn to-day, at twelve o'clock M.

Mr. A. F. ALLEN—Mr. President—

The PRESIDENT—This motion is not debatable.

The question was put on the motion of Mr. Hale, and it was declared lost.

The Convention again resolved itself into a Committee of the Whole, on the report of the Committee on Education and the Funds pertaining thereto, Mr. PROSSER, of Erie, in the chair.

The SECRETARY again read the first section, as follows:

SEC. 1. The capital of the common school fund, the capital of the literature fund, the capital of the United States deposit fund, the capital of the college land scrip fund, and the capital of the Cornell endowment fund, as it shall be paid into the treasury, shall be respectively preserved inviolate. The revenues of said common school fund shall be applied to the support of common schools; the revenues of said literature fund shall be applied to the support of academies, and the sum of twenty-five thousand dollars of the revenue of the United States deposit fund shall each year be appropriated to and made a part of the capital of the said common school fund; the revenues of the college land scrip fund shall each year be appropriated and applied to the support of the Cornell University, in the mode and for the purposes defined by the act of Congress donating public lands to the several States and Territories, approved July 2, 1862; and the revenues of the Cornell endowment fund shall each year be paid to the trustees of the Cornell University, for its use and benefit.

Mr. CURTIS—Before proceeding to amend this section, I wish to make a motion for the purpose of testing the will of the committee. It is inevitable that the session of the Convention to-day will be very brief. It is evident that the number in attendance is very small, and that it will be necessary for the Committee on Education, in case the debate proceeds, to make certain statements in regard to the article now under consideration, which should be made in the hearing of the full Convention, and which will not come before the members of the committee at large unless they should be present. It will, therefore, involve the

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necessity of repeating by fragments hereafter whatever might be said on the subject to-day, and in view of that fact I shall move that the committee now rise, report progress, and ask leave to sit again.

Mr. S. TOWNSEND—I hope not, sir. Let us go on and perfect this article, and then, if those gentlemen who are now absent have the bad taste, when they come here, to overturn what we have done, let them do it. I am surprised that this motion should be made by the gentleman from Richmond [Mr. Curtis], because I had always supposed that he was a man in favor of going ahead.

Mr. CURTIS—I make the motion because of the evident fact that there are so few members present that we cannot make any considerable progress.

Mr. ALVORD—I call the gentleman to order; the motion is not debatable.

Mr. S. TOWNSEND—I trust, Mr. Chairman, that the committee will not now rise—

The CHAIRMAN—The gentleman from Queens [Mr. S. Townsend] is out of order.

Mr. S. TOWNSEND—Then we are both out of order. [Laughter.]

The question was put on the motion of Mr. Curtis, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. PROSSER from the Committee of the Whole, reported that the committee had had under consideration the report of the standing Committee on Education and the Funds pertaining thereto, had made some progress therein, but not having gone through therewith, had directed their Chairman to report that fact to the Convention, and ask leave to sit again.

A DELEGATE—I move that the committee have leave to sit again.

Mr. M. I. TOWNSEND—Would a motion be in order to go again immediately into Committee of the Whole upon this subject?

The PRESIDENT—The motion for leave to sit again may be amended in that way.

Mr. M. I. TOWNSEND—Then I make that motion.

Mr. VAN CAMPEN—It must be evident to gentlemen here that the number present is so small that we shall hardly be able to go on and transact any business, and I hope, therefore, that the motion of the gentleman from Richmond [Mr. Curtis] will be adopted.

Mr. CURTIS—My motion was simply intended to save the time of members of the Convention, because, it is inevitable that whatever I might say in explanation of the report of this morning, I should have to repeat upon the continuation of the discussion when we should have a fuller attendance hereafter. It is a matter of plain perception, and I am sure the gentleman from Rensselaer [Mr. M. I. Townsend] cannot fail to see it.

Mr. ALVORD—The difficulty in this case, suggested by the gentleman from Richmond [Mr. Curtis] will be the difficulty in each and every one of the cases that will come up here. We have to do one of two things, either to adjourn now and wait until we get a quorum, or to go on as far as we can in the transaction of the business before the Convention. The difficulty is, that, if the gentleman from Richmond [Mr. Curtis] be permitted to have his view of this case carried out by the Convention, that action will have to be continually repeated hereafter, because the same difficulty will be continually coming up.

Mr. CURTIS—The gentleman from Onondaga [Mr. Alvord] will certainly acknowledge that Saturday has always been an exceptional day with us in the Convention. So far as I am aware, we have never done any serious or considerable business on Saturdays.

Mr. ALVORD—Then if we cannot do any thing, let us adjourn.

Mr. BELL—I have a very great regard for the members of this Convention who are absent, particularly those who are necessarily absent; but I have a greater esteem for those who are present to attend to their duties; and if we have to wait to present and discuss reports until we have a quorum, I fear we shall not be able to any thing at all. I should be very glad to favor the desire of the gentleman from Richmond [Mr. Curtis] on this subject, but I do not see how we can do it without giving up the attempt to do any business. I am not aware that at any time during the past we have had a quorum here.

Mr. M. I. TOWNSEND—There has never been a quorum actually present in this hall for one minute during the past week.

SEVERAL DELEGATES—Oh yes.

Mr. BELL—With all due deference to the Chairman of the Committee on Education, I am of opinion that we had better go on with this article now, and debate it as best we may. If other members who are absent are dissatisfied with the results at which we have arrived during their absence, they will have the chance to go over the ground again, as they have already done in some instances; but it is due to ourselves and our constituents that we make progress here as rapidly as possible, whether we have a quorum or not; and therefore I am in favor of going on with the consideration of this report.

Mr. M. I. TOWNSEND—I am exceedingly sorry that the members of the Convention who do not attend here are so pressed with their private business, or are so regardless of the public interests, as not to be here. But the intention of the larger proportion of the members of this Convention, in regard to attendance upon its sittings, is perfectly manifest at the present time. There is left, however, in this Convention intellectual power enough to transact any business in which the State is interested. It is no boast to say that we have gentlemen here who are experienced in legislation, experienced in the business of life, and acquainted with the needs of the State, and that we have enough of such gentlemen to go on and judiciously arrange every article that is to be arranged and perfected by this Convention. We have a number here that can be counted on for regular attendance very much larger than the numbers of the State Senate, to which the most important interests of the State are intrusted, and through which every act of legislation must pass. Now, why should not we, who are here, and who are left to discharge our duties as members of this

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Convention, go on and transact our business, and why should we be subjected to personal inconvenience or loss by attending here from day to day waiting for men who do not come, and who plainly do not mean to come, except as it suits themselves? Sir, I should not esteem it a calamity to this State, if just the number of men who are here to-day should make the final disposition of this article. We should probably arrange it as judiciously as if there were greater numbers in attendance upon this floor. Last night when I opposed an adjournment over to-day, I suggested that if we had but twenty members here to-day, and a presumptive quorum, that we should go on with the business; and I understood last night that it was in that spirit we were to come here to day. Now, sir, I hope that we shall not decide that the gentlemen now sitting in this hall are not competent to discuss and dispose of this article.

Mr. MERRITT—While I am free to admit the soundness of the position taken by the gentleman from Rensselaer [Mr. M. I. Townsend]. It must be evident to all that we have but a very small number of members present. This report is as important as any that has come before us, or that will come before us during the progress of our labors. It is an article which affects every school district in the State, and one which should have a very full and deliberate discussion, and I therefore move that this Convention do now adjourn, giving notice to all who may wish to be here next Monday, that this subject will then be taken up. I do this as a matter of courtesy to the committee, and of justice to the subject of their report.

The question was put on the motion of Mr. Merritt, and it was declared lost.

Mr. FOLGER—I move the previous question on the motion of the gentleman from Rensselaer [Mr. M. I. Townsend], to again go into Committee of the Whole on this report.

The question was put on the motion of Mr. Folger, for the previous question, and it was declared carried, and the main question ordered.

The question then recurred on the motion of Mr. M. I. Townsend, to go into Committee of the Whole on the report of the Committee on Education and the Funds pertaining thereto, and it was declared carried.

The Convention then again resolved itself into Committee of the Whole on the report of the standing Committee on Education and the Funds pertaining thereto, Mr. PROSSER, of Erie, in the chair.

Mr. GOULD—I move to pass over the first section.

Mr. M. I. TOWNSEND—Why?

Mr. GOULD—Because the first section will probably elicit a very considerable amount of debate, and we shall gain no time whatever by considering it, and I think we had better go on with the second section.

Mr. ARCHER—I can see no reason for passing over the first section that will not apply to each subsequent section, and if we are constrained to proceed now with the consideration of this report, I hope we shall take it up in its order.

The question was put on the motion of Mr. Gould, and it was declared lost.

Mr. A. LAWRENCE—I move to amend the first section by striking out from lines twelve and thirteen the words, "to the support of the Cornell University," so that the clause will read: "The revenue of the college land scrip fund shall each year be appropriated and applied in the mode and for the purpose defined by the act of Congress donating public lands to the several States and Territories, approved July 2d, 1862." I desire to make a few remarks in support of this amendment. It seems to me that the recommendation of the committee to appropriate the revenues of this college land scrip fund to the Cornell University involves a very wide departure from what has been our accustomed policy in similar matters heretofore, and I think it will be conceded that we should not depart from what has been the traditional policy of the State in matters of mere expediency, unless such departure is manfestly an improvement, or unless the chances preponderate very much in favor of its being so. Now, the traditional policy of the State, heretofore, in regard to funds which have been devoted to educational purposes, has uniformily been to provide for the inviolability of the capital by a Constitutional provision, and by a similar provision to appropriate their revenues in general terms to certain kinds of education; but we have never yet had in the Constitution a specific appropriation of the revenues of any of these funds to a particular institution. This has been the policy of the State for nearly fifty years, as long as we have had any policy on the subject of education indicated in the Constitution. It was embodied in the Constitution of 1821. Twenty-five years' experience dictated its re-affirmance in the Constitution of 1846, and it has stood the test of our additional experience down to the present time. The Committee on Education bear witness to this by recommending the transfer, literally, from the Constitution of 1846, of all the provisions in relation to education in that instrument; the only change which they recommend to be made is in regard to the revenues of these new funds, the college land scrip fund, and the Cornell endowment fund. Now, as to the Cornell endowment fund, there was a misunderstanding between Mr. Cornell and the commissioners of the land office as to the meaning of that provision of the act, authorizing the sale of the scrip, which required that the profits, after the sixty cents an acre, which the law intended should go into the college land scrip fund, should also be paid in by the purchaser for the benefit of the institution which was organized by that act. Mr. Cornell claimed that he had a right to make that a fund which should appear as a gift from him, and the commissioners of the land office accepted it as such; which makes the case of that fund an exceptional one, and perhaps, the recommendation of the committee, as to the income of that fund, is right. But there is nothing of that kind to affect the college land scrip fund, and I cannot see what necessity there is, or what advantages will accrue to the cause of education, from appropriating in that way the income of that fund to an institution which has not yet gone into practical operation. The committee in their report have not assigned any reason why it should be done;

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though, perhaps, they may do so in their remarks before this committee. But it seems to me there are many reasons why it should not be done, and that the advantages of complying with their recommendation are at least problematical. The income of this college land scrip fund is already appropriated by the act of Congress making the grant, and by the act of the Legislature accepting it, to the support of institutions which shall make education, as connected with agriculture and the mechanic arts a leading feature. Then, by a subsequent act of the Legislature, the revenues have been appropriated to the Cornell University on certain conditions, one of which is, that Mr. Cornell should give five hundred thousand dollars as a part of the endowment of this university, that amount to be given beyond recall. Another condition was, that he was to give twenty-five thousand dollars as the endowment of a professorship of agricultural chemistry in the Genesee College at Lima. The sequel has shown that this latter "gift" was but a temporary loan. The law organizing and incorporating the Cornell University was passed in the spring of 1865, and little more than two years elapsed before an act of the Legislature was passed, refunding to Mr. Cornell out of the State treasury the amount which he had given to found this professorship in the Genesee College. Now, whether the provision in the law incorporating the Cornell University, that any subsequent act of the Legislature looking to the refunding of the larger gift shall not be valid—whether that provision is absolutely binding on subsequent Legislatures, is a question on which there are differences of opinion, and I think the preponderance of opinion would be in favor of the idea that one Legislature could not bind subsequent Legislatures. I am told by those who were here at the time the act was under the consideration of the Legislature, that it was understood, although it was not so expressed in the law, that both gifts were irrevocable. Now, it seems to me to be but a requirement of ordinary fairness and prudence, that the conditions to be performed by the State, and those to be performed by Mr. Cornell should both rest on guaranties of like stability; and not that there should be on the one side a constitutional provision which is practically unchangeable (for in a matter of that kind, you could rarely effect an amendment of the Constitution in the ordinary way) and on the other side simply an act of the Legislature which may be amended or repealable at any time, as we have seen by the passage of the act refunding to Mr. Cornell the smaller gift. If the State held these lands by absolute ownership, the case would be somewhat different; but even then it would not be wise for the State to thus divest itself for twenty years to come, of all control over the revenues of this fund. But the State is not the absolute owner; it holds this fund as a trustee rather than as an owner. In accepting the grant the State became liable for the performance of certain conditions which were annexed to it. Now, the interests of the State seem to me clearly to require, and I think the interests of education generally, if not the particular interests of the institution which receives this grant, also require, that there should be some power which can watch over with jealous care the expenditure of these revenues from year to year, so that, in the first place, the State may be able to carry out in good faith the obligations which it assumed when it accepted this grant, and may be able to protect itself against liability to loss; because, should these revenues be misapplied, the State would certainly be bound, in honor at least, to make good the loss. Now, to do this effectually, it seems to me that the proper provision in regard to this gift and its income, in the Constitution we are framing, is to protect the capital as recommended by the committee, and then to appropriate the revenues in general terms, to the purposes defined in the act of Congress; and that is the object of the amendment which I have offered, and that would be in accordance with our past policy in regard to all educational funds, and would leave the Legislature free, from year to year, to exercise any supervision or control which might be necessary to guard against the unforeseen but possible contingencies of the future. If we were dealing with a matter on which experience had thrown any light, we might be better able to judge of the propriety of a provision like this; but we should remember that educational institutions, having the peculiar features required by the act of Congress granting these lands, are of such recent date, that they may be regarded as an almost untried experiment. Take any other class of our institutions of education, our colleges, academies or common schools, and each one of them, in its present state of efficiency, is the result of the experience of at least half a century, and we do not believe that they have, by any means, reached perfection, and we certainly cannot regard these institutions contemplated in this act as having yet reached such a degree of perfection that we can safely set them in motion and let them go on without State supervision or control. Now, it is not to be supposed that the plan of organization drawn up by the trustees of the Cornell University is so perfect but that it will be found susceptible of many improvements, and certainly, there should be a power somewhere outside the board of trustees to initiate these improvements when they are called for by the public sentiment. We all know that, it is an idea quite generally entertained, and I think with some foundation in truth, that institutions of learning which are richly endowed, and under the control of self-perpetuating bodies of trustees, have a tendency to lag behind the progress of the age, to have an undue reverence for the past, and to have a sort of instinctive dread of change as dangerous innovation. The Cornell University is intended to be an embodiment of the most advanced ideas in relation to education. But we do not know what effect time may have upon that institution in this particular, and it will do no harm, at all events—and it may be a great good—it may be a healthful stimulus—for the institution to endeavor to carry out the purposes for which it was founded and for which these revenues were granted, to have a power which from year to year can supervise their proceedings and their use of their revenues. Now, if the act of 1865, which incorporates the Cornell University and grants these revenues to that university on certain conditions, constitutes such a

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contract (so long as Mr. Cornell complies with the prescribed conditions) as places it beyond the power of invalidation by the Legislature, what necessity is there, looking solely to the interests of that institution, for such a provision as this? It would simply have the effect of lessening the inducements to comply with the requirements of the law. But, if it is the intention of this provision, to appropriate these revenues to that institution, to secure them to it beyond any contingency which might arise from Mr. Cornell's failure to comply with the conditions of the appropriation, why certainly it is manifestly unwise for this Convention to sanction any such idea. Now, upon the supposition that the act of 1865, incorporating the Cornell University, and the subsequent act of 1866, authorizing the sale of the land scrip, and the contract between the commissioners of the land office and Mr. Cornell, which resulted from that act, have not placed this matter beyond the power of the Legislature, it is well to look at it in another aspect. The good policy of making one institution the sole beneficiary of this grant has been doubted by many. The founder of the Cornell University was most decidedly opposed to it, when the revenues of this fund were granted to the People's College. It is well known that the friends of that institution—the People's College—presented very strong claims for years—that they had endeavored to get through Congress a law, granting lands for that purpose. They were almost alone from this State in their efforts to secure that end. Once the law passed both Houses of Congress, but it was defeated by the veto of President Buchanan. They perseyered in their efforts, however, and finally the law passed both Houses, and received the signature of President Lincoln in 1862. But with all these claims upon the Legislature in favor of their right to the income of this fund, the Legislature did not deem it prudent to appropriate those revenues without limit, to that institution. They provided that, whenever, in the opinion of the Regents of the University, the revenues should be in excess of the wants of the People's College, the Regents might withhold that excess, and bestow it upon those other institutions which might comply with the requirements of the law of Congress. At that time it was not supposed that the capital of this fund would, in any event, reach one million of dollars. But it appears by Document No. 47 on our files, that by the estimates of Mr. Cornell, the college which he has founded will, aside from the college land scrip fond, have an endowment of more than two and a quarter millions of dollars. Add this fund to it, and the total endowment is $2,944,000. Now, the plan of organization of the Cornell University which has been placed on our desks, contemplates twenty-six professors, resident and non-resident, and from the schedule of salaries in the same plan, it can be easily seen that a capital of $1,000,000 will produce ample means to pay all the salaries of the faculty and leave a surplus. The law of Congress does not allow any portion of the capital to be expended for buildings or in repairs, and it only allows ten per cent, and that only by the consent of the State Legislature, to be used for the purchase of sites, or for experimental forms, or for apparatus; so that, if you take from this sum the whole of the amount which may lawfully be used for these purposes, you will find that, over and above the college land scrip fund, which amounts to $594,000, the Cornell University will then, if Mr. Cornell's estimates are realized, have an endowment of more than two millions of dollars. Now a circular has been placed upon our desks in relation to the Cornell University, which assumes that the failure of the State of Michigan, when she scattered her land-grant funds, and her signal success when she concentrated them, is conclusive evidence in favor of the State of New York concentrating the income of this immense fund on one institution. The act granting these lands was passed about five years ago last July. Now, five years would be considered a very short time in which to test the relative merits of two systems of education, allowing two and a half years to each. What the contingencies connected with the experiment in Michigan have been I do not know; but assuming that, in five years, two systems of policy in regard to educational funds have been thoroughly tested, and one of them found to be a failure and the other a success, seems to me to be assuming a great deal. But there is no parallel between the two cases. The State of Michigan received two hundred and forty thousand acres of land—the State of New York received nine hundred and ninety thousand acres, more than four times as much as the amount received by Michigan. Now, if Michigan has so signally succeeded by concentrating that land grant, it is rather an argument in favor of New York's giving liberal endowments to several institutions, instead of giving a perfectly lavish endowment to one. There is another fact connected with this matter, which appears in Document No. 47, which complicates the matter somewhat, and which, of course, would render the policy of a fixed and permanent provision like this less wise; and that is, that this college land scrip had been contracted for sale, but the scrip had not all been located; and the contract allows the purchaser, Mr. Cornell, three years, within which to locate the scrip. Then it allows him twenty years in which to completely fulfill the contract. Well, the conditions may very much change within twenty years, and certainly we shall leave it in the power of the Legislature to meet these altered conditions, if they should occur. The experience we have had, as to these very lands, should warn us to be cautious how we make constitutional provisions whose wisdom or propriety may largely depend upon how, in the future, contracts which are not completed shall be fulfilled, and whether estimates which are based upon anticipations of the future shall be fully realized. When the Legislature determined to appropriate the revenues of this fund to the People's College, the trustees of that institution, in addition to the strong claims which they could urge in consequence of their instrumentality in obtaining the grant, had already erected buildings, which had almost reached completion, and which could not now be erected for less than seventy-five to one hundred thousand dollars, and probably one hundred and fifty thousand dollars

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would not be an extravagant estimate. They had done all this from private sources before getting this grant, and a few thousand dollars more would have enabled them to comply with the act of the Legislature which bestowed the revenues upon that institution; they had published and circulated plans of organization as voluminous, and perhaps as well digested as those placed upon our desks here. And if my memory serves me aright, they had also selected some of the incumbents of the more important professorships, and the friends of the institution believed that a few months would see it in successful operation. But like the Cornell University, that institution depended very much for its being put in successful operation upon the energy and liberality of one man; and just at this critical time in its fortunes a dispensation of Providence cast a cloud over the mind of that man, from which it never recovered, and what had been the cherished aspiration of his life up to that time became to him a matter of perfect indifference, if, indeed, I might not characterize his feeling in regard to it by a still stronger term. Under those circumstances the trustees who had already strained every nerve and exhausted every effort to comply with the law, were unable to do so. The conditions of the law of Congress required that States desiring to avail themselves of its benefits should do so within a limited time: that the State might not lose these benefits, the Legislature, after waiting some time, passed an act conferring these revenues upon the Cornell University, an institution which had no existence, except perhaps, in the conception of its founder, at the time when the friends of the People's College were laboring to secure this grant; but giving, however, the friends of the People's College three months within which to comply with the conditions of the grant; but this, under the circumstances, was an impossibility. The People's College has since recovered from the temporary paralysis into which it was thrown by this event, and is now in operation, and is laboring with reasonable assurance of ultimate success to carry out the objects for which it was chartered, considering the rigid policy which the State has adopted toward that institution. To confer these revenues now, by an unalterable constitutional provision, upon an institution that has not yet gone into practical operation, and which certainly has not yet been shown to be a success, would be unjust to every institution of the State which might otherwise hope for some of the benefits of this fund, if they should be in excess of the legitimate wants of the Cornell University; for it should not be our policy to give extravagant grants of money to any one institution. It would be peculiary unjust to the People's College, under the circumstances I have mentioned. If we regard this provision recommended by the Committee on Education in the light of justice or of good policy, it seems to me to be a provision of such doubtful expediency that we would not be warranted in placing it in the Constitution. It might also be a precedent for constitutionally discriminating in behalf of particular institutions hereafter, should they come before us with the plausible claims which this institution presents. I would not wish to be understood as saying what I have in support of this amendment in any spirit of hostility to the Cornell University; for, in common with others, I admire the munificence which has so liberally endowed that institution from a private source, and I believe the State should encourage such liberality in all proper ways, but such encouragement should always be subordinate to the great interests of education, which we desire to promote.

Mr. FOLGER—I desire to notice a remark which has been made by the gentleman from Schuyler [Mr. Lawrence]. It shows that he has fallen into an error which is not confined to himself but is held by many in the community. It is contained in his statement that one of the conditions of the grant to the Cornell University was that, Mr. Cornell should pay twenty-five thousand dollars to the Genesee College at Lima. Having some knowledge of that transaction, I am prepared to say that no such condition was ever, of its own motion, fixed by the Legislature upon the act passed for the benefit of the Cornell University.

Mr. A. LAWRENCE—My authority for that statement is Document No. 47, being the report of the commissioners of the land-office to this Convention, in which they state this: "The conditions on which the grant depended were first, that the Hon. Ezra Cornell should donate to the university the sum of five hundred thousand dollars; second, that he should pay over to the trustees of Genesee College, located at Lima, the sum of twenty-five thousand dollars." Then it gives the further conditions.

Mr. FOLGER—That only shows how extensive and how deep-rooted in the mind of the public that error has become, and how necessary it is in this public manner to refute the statement at once. That bill was introduced into the Senate, and it passed that body; it then went to the House of Assembly, where it met with a very formidable opposition from the agents of a religious body in this state. It became apparent to the friends of Mr. Cornell and of the Cornell University, as they thought, that the bill was likely to fail, or they be compelled to divide the funds, by reason of the opposition of the friends of Genesee College, while the agents of Genesee College, on their part, did not feel too certain of success. Then a proposition was made outside of the Legislature, in the lobby, that if Mr. Cornell would pay twenty-five thousand dollars to the Genesee College, the friends of that institution would withdraw their opposition to the bill, and it might go through the Assembly. It was altogether an affair outside of the Legislature. It was a struggle between the friends of Genesee College, on the one side, for the donation of a part of these lands, and of the friends of the Cornell University on the other side, for the whole of them—each struggling for the donation, or a part of it. This offer was made. After a consultation was had among the friends of the Cornell University, one of them advised Mr. Cornell that the condition exacted by the Genesee College had better be complied with; and it was agreed that Mr. Cornell should give to the Genesee College twenty-five thousand dollars, on the condition

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that the opposition of its agents should be withdrawn to the passage of the bill through the Assembly.

Mr. A. LAWRENCE—Will the gentleman allow me to ask him a question? Was not that condition inserted in the law?

Mr. FOLGER—I am about to state exactly how that took place; for there has been a great deal of denunciation of the Legislature by men who have been misinformed on the subject. As I said, that was an agreement that was concluded outside of the Legislature. But Mr. Cornell (and I approve of and applaud him for it), then said that he would do nothing in the dark; that if he was to give this sum for the withdrawal of this opposition it should be made public, and inserted in the bill, so that no man could accuse him of any underhanded work. At the request of a particular friend in the Assembly representing his assembly district (Mr. Lord, of Tompkins), that condition was, by unanimous consent, inserted in the bill, and in that shape it passed the Legislature—put in that shape, not by legislative demand, but by legislative acquiescence to the request of the friends of the Cornell University, to gratify Mr. Cornell, who desired that the transaction should be open and above board. The Legislature never thought of affixing such a condition as that in the bill. The payment of $25,000 was a proposition made by the friends of Mr. Cornell, or acceded to by them, to silence the opposition which they dreaded, fearing it would be detrimental to the university—to their effort for securing the whole of the grant to the Cornell University. The opposition was instituted by the denomination to which I have alluded, to secure a part of it in behalf of their institution. Such is the history of the insertion of the $25,000 condition in this act. When, the year after, Mr. Senator White, the chairman of the Committee on Literature, asked me if it was not proper that the Legislature should return that $25,000 to the Cornell University, I told him, as I say now, that it was the most impudent proposition ever presented to the Legislature of this State, that the treasury of the State should recompense money which had been given to buy off the lobby. That, sir, is the whole of it. I have heard it stated in the board of trustees of the Cornell University, by the gentleman from Columbia [Mr. Gould], who is now laboring under the same error, as it has been stated here by the gentleman from Schuyler [Mr. A. Lawrence], using pretty much the same expressions that have been used here, that this was a condition fixed by the Legislature, and that it was a monstrous and outrageous condition. My indignation hardly permitted me to sit still, but, at the solicitation of others I did. But now, when this charge against the Legislature is made in this public way, I am enabled to publicly refute the calumny, and say that the condition was not imposed upon Mr. Cornell by the Legislature, but was a matter that was arranged between the friends of the Cornell University and the parties who were opposing the grant. I do not make this remark by way of controverting the arguments of the gentleman from Schuyler, but only to put the record right in respect to a matter which has been used as a stigma upon the Legislature.

Mr. HALE—I would ask the gentleman from Ontario [Mr. Folger] whether this was inserted in the bill in the form of a condition as the bill passed the Legislature?

Mr. FOLGER—I do not know but that it was inserted as a condition; but however it may appear in the act, the truth in relation to it is as I have stated it. Mr. Lord, of Tompkins, or some friend of the Cornell University, moved it in the Assembly, and for the reason, and a very proper reason it was, that Mr. Cornell would not pay this money quietly and in the dark, but if he was to pay it at all he must have it spread upon the record.

Mr. ALVORD—I do not desire to enter at any length into the discussion of the present amendment, but I, too, desire to put the gentleman from Schuyler [Mr. A. Lawrence] right in respect to another matter in reference to the People's College at Havana. Long before any cloud came over the mind of the gentleman to whom he has alluded (Mr. Charles Cook), but in the face and eyes of the agreement which was incorporated in the bill that gave this property to the People's College, and a bill which was drawn up with his approbation and consent, he refused persistently to conform to the propositions there made in the bill by surrendering the title to the land upon which the People's College was to be built, and the appurtenances thereto, and he never swerved from that proposition. His claim was that until the institution was started and commenced operations and received the property from the State, he would hold in his own hands, and not give to the trustees as required by the bill, the title to the property—the fee to the land upon which the People's College was placed; and it was upon the demand upon the part of the Regents of the University, often and often repeated—and I speak of what I do know—and his continued refusal, that the bill was passed by the Legislature giving him even three months more to conform to the requirements of this act, and then, if he did not, he should be foreclosed so far as regards the People's College at Havana was concerned.

Mr. A. LAWRENCE—My understanding of that matter is different from that of the gentleman from Onondaga [Mr. Alvord]. Mr. Cook gave a deed requiring that the trustees should use the property for a college, and not for any other purpose. I was present at the meeting of the board of trustees in which Mr. Cook made the proposition to the trustees, though I have not seen the deed.

Mr. ALVORD—I cannot say what propositions may have passed between Mr. Cook, on the one side, and the board of trustees of the People's College, on the other. I speak now from my official knowledge that there never was any deed given by Charles Cook for that property to any body.

Mr. BELL—This matter occupied a large share of the attention of the Legislature in 1863 and 1865. I had the honor of holding a seat in the Senate at that time, and it was the disposition of the Legislature to confer the proceeds arising from the liberal grants of land from the United States upon the People's College. The act of 1863 was passed in accordance with that view,

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reserving the right that, whenever, in the opinion of the Regents of the University, a sufficient amount had been obtained to maintain that institution, the balance should be divided among other institutions that would comply with the act of Congress making the original grant. It is well known to every member of the Legislature, that took any action in that matter, that the founder of the People's College entertained strange and conflicting views on this subject. Having assured the committee that the necessary lands, buildings, etc., as contemplated by the act of Congress under which this grant was made, would be furnished at Havana without expense to the State, when the committee called his attention to the bill they had drawn, which required a strict compliance with these conditions on his part, or by the People's College, before this munificent donation could be made available, he replied, with strong emphasis, that he would do no such thing. Unfortunately, during the pendency of the bill in the Senate he fell sick, unable to leave his room. While the bill was still under consideration he sent a relative of his, who assured the committee that Mr. Cook would comply with the conditions of our bill. It was thereupon reported and it became a law. I do not think any of the committee ever received an unqualified assurance from Charles Cook, the founder of the People's College, that he would comply with that act; in fact he made use of the expression in my hearing and it has always remained fixed in my mind, that those were conditions that would never be complied with, and that he would see the committee and the Legislature in — heaven before he would do it. [Laughter.] Whatever his intentions may have been, whatever negotiations may have passed between him and the trustees of People's College, I am unable to say; but he never gave his consent to the Legislature or to the committee that he would comply with those conditions. The thing passed on, the matter being left entirely with him and the trustees of the People's College to comply with those conditions, until the year 1865. During the session of that year it was ascertained that a portion of the lands donated by the United States had been sold and that the moneys had been paid into the treasury. Provision was to be made by which the act of 1863 should be carried into effect and the benefits accruing from the donation of Congress should be applied to the People's College or some other institution to be provided. A liberal offer having been made by the Cornell University, a bill was drawn by which, on condition that Mr. Cornell should donate five hundred thousand dollars for the use of that institution, it should receive the entire proceeds of the donation of Congres, in accordance with the provisions of the act donating the lands. Much discussion was had on this subject. As has been stated by the gentleman from Ontario [Mr. Folger], whose recollections of this matter agree with my own, a very strange statement was made after the bill had passed the Senate, that twenty-five thousand dollars would be required for the Geneseo College before this bill could go through the House. Of course, those who were active in the legislation of 1863, by which the grant of lands from the United States was accepted and the income therefrom appropriated to the People's College, were astounded and horror striken that such a demand should then be made. At first this new and unexpected demand was strenuously resisted and the friends of the Cornell University said they would allow the bill to be defeated, if it must be defeated for the non-compliance with that demand. After the matter had stood in that position for several days, and I do not know but weeks, the founder of the Cornell University became a little nervous on the subject and his friends advised him to accede to the demand. Interviews were had with different parties, and the payment of $25,000 to Genesee College was finally placed in the bill as a condition for its passage through the Assembly. When this was done, I was still unwilling, as many others were, that the founder of the People's College should not have another opportunity to fulfill the engagement imposed upon him by the act of 1863, and thus allow the proceeds of this donation to inure to the benefit of that institution; therefore a further provision was inserted in the bill that the founder of the People's College, or the trustees of that institution should still have three months in which to comply with the conditions of that act, but if they failed to comply within that time, these funds were to be vested in the Cornell University. This, I believe to be a truthful history of this matter, as I recollect it from personal contact with the affair. Now, in regard to the very able argument which my friend from Schuyler [Mr. A. Lawrence] has made, I have simply to say that those who are at all conversant with the history of our higher educational institutions, must have seen the propriety of concentrating these funds in one institution, and that it would be highly detrimental to distribute this donation broadcast over the State, and divide it between six or eight different institutions. In fact, applications were made and strongly urged that this donation should be divided between eight different institutions, one of which to be located in each judicial district of the State. It is known that nearly all of our higher institutions have been very feebly supported. They have had a feeble existence from the fact that we have more of them than we can properly sustain. Instead of dividing this donation in the same manner among them all, or giving it to any one of the existing colleges, it was thought to be a wiser course to concentrate the whole sum in a new institution, and insure to it a healthy and vigorous existence, with sufficient endowment to enable it to perform fully the object of its creation. I hope that nothing may be done here to wrest this donation from this purpose. I think it is wise, and I think in the end it will prove a great blessing to the State.

Mr. GOULD—The question which is to be decided at the present time is what is the best disposition of this great fund of the people of the State of New York. The doctrine, "*salus populi est suprema lex*," must determine this matter in the long run. Now, sir, before we can settle this matter as it should be settled, we must understand something of the necessity of a great and power-

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ful agricultural college. We have heard, in the course of the discussions before this Convention, a statement from the chairman of the Finance Committee [Mr. Church] which may well appal every citizen of the State. We have seen in that report the tremendous indebtedness which hangs over us, and which, unless we look upon the other side of the picture, is sufficient to fill our hearts with despair. But, sir, the chairman of the Committee on the Finances of the State did not look on the other side of the picture. He did not show us all the potentialities of wealth in this State, and especially of agricultural wealth. He did not tell us, sir, that four millions of tons of hay are raised in the State of New York, which were worth in the market $40,000,000. He did not tell us that the pasturage of the State of New York was worth an equal sum, that the grass crop of the State of New York alone amounted to $80,000,000 per annum. Well, sir, I think I have a right, from the official position which I have held as president of the State agricultural society, to express opinions which ought to go for something with the members of this Convention, and I do state, without a shadow of doubt, that it is within the power of the farmers of this State to make two blades of grass grow where only one blade had grown before. There is no difficulty in this process if they are only rightly informed how to do it. What is the result of making two blades of grass to grow where one grew before? It is to add $80,000,000 annually to the productions of the State. Now, sir, I am very confident that if a properly managed agricultural college were established, where the young farmers of this State can be thoroughly educated, it will not be twenty years before the grass crop will be doubled in this State upon the same area that now exists, and there is a possibility of largely extending that area. There are ways and means that I could detail in this Convention. For instance, by means of irrigation, which adds immensely to the agricultural wealth of Europe, but which is very little understood by the farmers of this State at the present time. Sir, a computation has been made in reference to the river Rhone, that ten thousand cubic yards of water in that river contain sufficient material to build up an ox. But, sir, we have on the streams of the State of New York which run into the sea, carrying with them all their wealth, but which might be diverted for the purposes of irrigation, enough real wealth, in the shape of rich food for our growing crops, to add $10,000,000 annually to the grass crop alone. Why is this not done? Because the farmers of New York are not educated to it. They are not aware of the immense value which exists in it, and they are not aware of the practical means by which this may be distributed here, as it is distributed over the fields of Italy and other portions of Europe, where the principles of irrigation are known. Now, if we have an agricultural college that is a good one—not a small one, not a petty one, but one under the care of professors who are eminent men in their profession—all this knowledge would be spread before us. Now, sir, what are the other facts of the case? You are old enough, sir, to remember when Troy flour was a necessity over almost the whole of New England and the whole of New York. No prudent housewife thought she could keep house without "Troy flour." Where did the wheat come from from which the Troy flour was made which was distributed to such an extent over all the New England States and the State of New York? That wheat was raised in the county of Albany, in the northern part of the county of Columbia, the county of Rensselaer, the county of Washington, the county of Schenectady, and the county of Montgomery. These counties, at that time, produced an amount of wheat which was sufficient, almost, to feed the whole of New England. Now, sir, the counties which I have spoken of do not raise enough wheat to support one-tenth of their population. Why is this, sir? What has driven this great amount of wheat from these counties? It is, sir, because of a single worm, a little worm which is made by an insect not larger than a pin's head. It was introduced here from England, and it has spread at the rate of thirty miles a year, and that insect has absolutely banished the growth of wheat from the counties I have just named. When it was ascertained that this disease was spreading here, an order in council was drawn in England, that no American wheat should be introduced into that kingdom, lest the disease should be introduced there; but before promulgating that order, it was referred to some of the most eminent naturalists of that kingdom, who reported that the insect in question was not indigenous to America; but that it had been exported from England itself, and that the insect was always there—that it was a native of England. Then the question arose, why was not the insect as dangerous in England as it was in the United States; and the answer was that in England there was a parasite still more delicate than the insect itself which, as soon as the worm was developed, stung the worm, and by that sting the worm was killed; and thus its increase was kept within bounds. The only question with naturalists has been how we can get a single pair of those parasites brought over to America. If that could be done it would prove the destruction of the worm which has been so destructive to wheat growing in the counties I have named. With all the resources of science, to enable us to bring over that parasite, with hundreds of bottles containing it sent here, they invariably died on the passage. We want to know some means by which the ravages of this insect can be stopped. If that could be done the value of the production of wheat would be increased thirty per cent, and that increase would enable us to pay the taxes which terrify us so much, and would be that much clear gain of wealth to the people of this State. Sir, we have, in the State of New York, one million one hundred and twenty-three thousand six hundred and thirty-four cows. Now, sir, we know, and I need not tell the gentleman from Herkimer [Mr. Graves] and the gentlemen who reside in other dairy districts here, what an immense amount of wealth there is in the products of butter and cheese, which are made from the milk of these cows, and how much they enable us to contribute to pay the taxation of the State. Now, sir, through a terrible malady which has come upon these cows, there were

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no less than forty thousand last year in the county of Herkimer alone, which aborted in consequence of the presence of this epidemic. This disease also exists in the county of Oneida and several other dairy counties. We do not know what the causes of this are. The farmers with their rude means of investigation, have not been able to ascertain the cause of the difficulty, and it still continues, and it is for the highest interest for this State, that that epidemic should be exterminated. But, sir, we have no organized body of men in the State of New York whose duty it is to make this investigation. If we had an agricultural college endowed with a corps of professors who would carefully and thoroughly investigate this matter and look into it from the root and foundation, we should be enabled to discover the cause of this thing, and ascertain a practical remedy for it, so that it might be exterminated. If we could have a remedy adequate to cure this epidemic—the abortion among cows in the State of New York—it would add millions of dollars to our wealth. It is very necessary then that we should have one great institution in the State of New York, sufficiently well endowed to provide for securing the services of the most eminent men that could be found in the whole country, so that this great question may be thoroughly investigated and receive such elucidation as the magnitude of the interest involved so imperiously requires. We need just such a university as the Cornell University, with its entomologists to grapple with the diseases of the wheat, the grape, the hop, the apple, the currant, and other agricultural products caused by the ravages of insects, its physiologist, its veterinary professors to study the diseases of animals and provide a cure for them. Now, having shown as I think, satisfactorily, if we can judge Babylon by a brick, some of the few inestimable benefits to be conferred upon this State by such an institution, I go on to show why it is desirable to give this endowment to the Cornell University. The gentleman from Schuyler [Mr. Lawrence], tells us that this principle which has been laid down by the Committee on Education involves a very wide departure from the previous policy of the State. Sir, how does it make a wide departure from the previous policy of the State? Have the people of the State of New York ever avowed a policy that they would not adhere to a bargain that they had solemnly made? Has such a policy ever been avowed by the people of the State of New York that they would violate a pledged word? I have not heard of such a policy. It seems to me that any other course than the grant of a constitutional guaranty of this kind would be a departure from our previous policy; it would look to the probability or to the possibility certainly of the State receding from its bargain solemnly made and for which it has received a most valuable consideration at the hands of Ezra Cornell. The gentleman, as I understand it, admits that the college land scrip fund is inalienable, that there is no power whatever in the State of New York to alienate that fund which has been created solely by the intelligence and activity of Mr. Cornell himself. If I understood the gentleman correctly, he was willing that the guaranty to that college of the land scrip fund should go in the article we are preparing.

Mr. FOLGER—There are two funds—one the land scrip fund and the other the endowment fund.

Mr. GOULD—I understood the gentleman to say that the land scrip fund was inalienable.

Mr. A. LAWRENCE—No; I said the endowment fund.

Mr. FOLGER—The land scrip fund is the first price of the land scrip — what the Comptroller gets for it. It is thus, the Comptroller has this land scrip for nine hundred and ninety thousand and odd acres of land. The highest price at which it has been sold by him is, I believe, no more than eighty-five cents per acre, and some has been sold as low or lower than sixty. The land scrip fund, by act of Congress, is entirely inalienable by the State, and the revenues from it must be devoted for the purpose of maintaining a college at which agricultural knowledge and military tactics are to be taught: but in making the arragement with Mr. Cornell, by which he was to receive this scrip from the Comptroller at a certain price, he agreed, upon his part that, whatever profits should come from it should form another fund, which is called the endowment fund; so that the land scrip fund is composed of the first price of the land scrip and the endowment fund is made up of the profits and the sum contributed by Mr. Cornell.

Mr. GOULD—I misquoted the word; what I meant was the endowment fund.

Mr. CURTIS—For the purpose of completing the statement which the gentleman from Ontario [Mr. Folger] has made, I will state that the land scrip fund, in addition to the price Mr. Cornell pays for the scrip, there is set off thirty cents an acre of the profits received in the transaction, which sum is added to the land scrip fund, and these two items together constitute what is called the land scrip fund.

Mr. GOULD—All I mean to say is, that one of these funds, technically called the endowment fund, is not contested by the gentleman from Schuyler [Mr. A. Lawrence]. If I understood him, he is willing that a constitutional guaranty should be given for that fund. His only question is in regard to the land scrip fund itself. Now what are the circumstances connected with this matter? The preliminary statement has been clearly made by the gentleman from Ontario [Mr. Folger] and by the gentleman from Jefferson [Mr. Bell]. It has been shown that every opportunity which any mortal man could desire was given to Mr. Cook and the trustees of the People's College to comply with the conditions that the Legislature had laid down preliminary to granting them this munificent donation given by the Congress of the United States. But Mr. Cook utterly refused to comply with those conditions. What title, then, has he, and how is it any hardship upon him or upon the People's College, that this grant should be withheld from that institution? The offer was made to him on condition that he should comply with certain conditions, and he refused to comply with those conditions, and therefore the offer naturally and legitimately lapsed. He had no claim to it what-

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ever. What are the circumstances in regard to Mr. Cornell? He offered to endow the institution with the sum of five hundred thousand dollars as a condition of the grant being made to the Cornell University. He offered it in good faith, and he has actually paid the money into the treasury, and has fulfilled all the conditions which are required on his part—every one of them; and the State of New York, in consequence of this consideration, has granted to the Cornell University the use of the fund it received from the United States. Now, sir, the gentleman [Mr. A. Lawrence] says that the State cannot alienate its interest because it is a trustee of this fund. The words of the act of Congress are that this land is to be granted to each State. To be sure, it makes certain conditions in reference to the use of the grant, but, as long as those conditions are complied with, the grant is absolute on the part of the general government. Sir, the State of New York, when granting this fund to the Cornell University, imposed the same conditions, and, so long as the Cornell University fulfills those conditions, just so long has it an inalienable right to the proceeds of the land. And, sir, the organic law of the State, ought to prevent him and the university from being "black-mailed" during every session of the Legislature. Every gentleman knows that that is desirable, for it is as certain as that the sun will rise, that unless this constitutional guaranty is given, this black-mailing will be attempted to be levied upon this institution, its beneficent acts will be arrested every year, and the question will arise whether it will be able to maintain the corps of eminent professors which is necessary for the purposes I have described in the opening portion of my remarks. Now, sir, it seems to me that this Convention ought not to hesitate in giving this constitutional guaranty. We have not, sir, a very large number of men like Ezra Cornell. He is a man of whom I love to speak—a man who is brightest among the real jewels of New York. Arising, sir, out of abject poverty, he has, by the force of his own genius and intelligence, accumulated a handsome and princely fortune. Other men take care to enjoy fortunes during their life-time, but not so with Ezra Cornell. In his very life-time, while in the full vigor and power of manhood he dedicates a munificent proportion of his private fortune to found a university which shall be for the benefit, not of rich men only, but of the mechanic and the farmer, and all others who, like himself, in early life are compelled to struggle with penury and privation. Sir, can we afford to reject munificent gratuities of this kind? How can the State of New York ever hope to be made the beneficiary in the future of like minded men, if it now, in the spirit of petty traffic, says: "We have got you fast, and we will withdraw from our part of the bargain." Sir, it puts the people of the State of New York in a condition so utterly disgraceful, that if the State were to adopt the suggestion, it would become a hissing and a by-word throughout the whole civilized world. Now, sir, in regard to the statement made by the gentleman from Ontario [Mr. Folger]. I remember very well, on one occasion, to have handled the Legislature without mittens. I take this occasion, however, to acknowledge that I was mistaken in regard to the matter. I accept the explanation which has just been made by the gentleman from Ontario [Mr. Folger], and the gentleman from Jefferson [Mr. Bell]. I admit that I was mistaken—that it was merely the trustees of Lima College who are guilty of this black-mailing, and that the Legislature neither suggested or sanctioned it. Now, the gentleman from Schuyler [Mr. Lawrence] says that there should be reciprocity in this matter. He says that the State is bound, on the one hand, if this constitutional provision is adopted, but that Mr. Cornell is not bound on the other. I do not understand why there is any want of reciprocity in this. It seems to me that the matter is obligatory on each side. It seems to me that Mr. Cornell is bound to give a valid education to the farmers and the mechanics of this State, and that he cannot in any way get clear of this obligation. So, on the other hand, as long as he does comply with the stipulations he has made, and as long as the Cornell University gives this, so long is the State bound to give the whole amount of the endowment which was granted by the general government. He says that the State ought to have a right to see to it that a proper application is made of this fund. Sir, the condition of the article which has been presented by the committee on education will be no bar whatever to the right of the State to see to it; if, at any time, the Cornell University should, in any way, fail to comply with the stipulations which are annexed to the acceptance of that fund, and should become a defaulter to the State, the State has a right to step in at any time and compel the university to perform its part of the contract, or, if it refuses to do so, it will then have the power to change the constitutional provision, and resume its control. The supreme court is the official visitor of all State institutions, and, if any institution fraudulently refuses to perform its part of the contract, the supreme court of New York has abundant power to step in and compel the institution to do it. The gentleman from Schuyler [Mr. A. Lawrence] alleges that the trustees of the Cornell University are a self-perpetuating institution; that it is a close corporation. That, sir, is not so. There is no self-perpetuation about it.

Mr. A. LAWRENCE—Does not the majority of the board of trustees have power of filling vacancies in its own body?

Mr. GOULD—Only for the present. There is a provision that as soon as there are one hundred young men who have graduated from that institution, those graduates shall have the power of electing the trustees.

Mr. A. LAWRENCE—They can perpetuate themselves outside of the authority of the State under their charter.

Mr. GOULD—They are prevented from perpetuating themselves by the power granted to the graduates of the university to fill vacancies as they arise, and by *ex officio* members. It is not therefore a close corporation, in the ordinary sense of the term, and thus the charge falls to the ground.

Mr. BARTO—How many are there?

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Mr. GOULD—As soon as they have a hundred graduates they have a right to elect one, and as the graduates of the institution increase, the proportion of the board elected by them is increased.

Mr. CURTIS — There are certain *ex officio* trustees mentioned in the act.

Mr. GOULD—Yes, sir, and among them is mentioned the Governor, the Lieutenant-Governor, and the President of the State Agricultural Society. There are seven of these *ex officio* members in all.

Mr. A. LAWRENCE—I know that there are certain *ex officio* trustees, but those who are chosen in the manner I mention are a controlling majority of the board.

Mr. GOULD — I believe I have met nearly all the arguments which have been presented by the gentleman from Schuyler [Mr. A. Lawrence]. The arguments in favor of carrying out in good faith, the article as proposed by the Committee on Education, are absolutely unanswerable and overwhelming. We cannot by any possibility refuse to carry them out, unless we incur danger and disgrace; and I hope, without any further ceremony, the Constitutional Convention will sustain the recommendation of the committee as being for the best interests of the State.

Mr. FOLGER—I offer the following amendment: In line fifteen, after the figures "1862," insert the following words: "So long as said university shall fully comply with and perform the conditions of the act of Legislature establishing said university." I offer that amendment to meet what I conceive to be the stress of the argument of the gentleman from Schuyler [Mr. A. Lawrence]. I did not understand him to object to this institution, its plan and purpose. I understand him as conceding that its organization was well planned, that its object was good, and that if it succeeded according to its anticipation it would make an institution desirable to the State and highly to be approved of; but he seemed to fear that a constitutional provision which should run for twenty years, might be in existence after this university had failed to comply with the conditions of the act of the Legislature which established it, and which gave this ample fund. That seemed to be the stress of his argument. It was certainly that portion of it which had the most effect upon me. I think my amendment meets that difficulty, as it provides that, while we should give, by the Constitution, the avails of this fund to the university, we still retain in the hands of the people through the Legislature, the power to retract it if the university fails at any time to perform the obligation on its side. As the gentleman from Columbia [Mr. Gould] observed, the State has entered into a *quasi*-contract with the Cornell University for the establishment of an agricultural college by which, in consideration that on the part of Mr. Cornell, he had given, or would make a donation of five hundred thousand dollars, and in consideration of one other thing, which has been omitted by all the gentlemen who have spoken, that the university shall receive for education one youth from each assembly district in this State annually, free from any charge for tuition—in consideration of these two things, one on the part of Mr. Cornell and the other on the part of the university, the State has solemnly said by act of Legislature that this fund shall be paid over to the treasury of this institution. Now, this appears to me morally and legally a contract, a contract not to be retracted were it not that there is a certain provision contained in the act which may enable the Legislature to alter, repeal, or amend the act. The precise force and extent of such a section I believe has not yet received a judicial interpretation.

Mr. ALVORD—I understand the law to be that one student from each assembly district shall be educated each year for four years, which would, after four years, make the number of students receiving free education in the whole State, five hundred and twelve, continuously.

Mr. FOLGER—Now, sir, I say that this act having been solemnly passed, and this condition imposed, and Mr. Cornell having advanced five hundred thousand dollars, and paid in the money or secured its payment to the satisfaction of the State officers, he has complied with so much of the condition on his part; and so, if the university received from each assembly district these youth, and continues to do so for years, the State incurs an obligation, and should see to it that it faithfully fulfills it. I do not understand the gentleman from Schuyler [Mr. A. Lawrence] to object to this. The difficulty he fears is that, by and by, the university may fail of carrying out its part of the agreement, and then, if a clause like this is not in the Constitution, the only remedy of the State will be in another constitutional amendment. My amendment leaves it so that, if the university fails in performing its part of the bargain, the matter is left in the hands of the Legislature to repeal, alter, or amend in any way they see fit. But the university needs some protection on its part against hasty, improvident, and wicked legislation, if such there be, and from the current opinions it would seem that there might be such. This protection is offered by this amendment, and no legislation can take place in reference to the matter until the Cornell University should fail to comply with the conditions of the grant.

Mr. A. LAWRENCE—I understand it be the view of the gentleman [Mr. Folger], as a lawyer, that Mr. Cornell has complied with the conditions of this law, and that the Legislature has no power to invalidate the contract. What is the necessity, then, of a constitutional provision, giving any stronger sanction to it? In the case of Mr. Cornell, let us suppose, for I do not anticipate any thing of that kind (this constitutional provision being adopted), that he or his heirs should apply to the Legislature for an act to refund this money, and that such an act is passed. This constitutional provision, with the amendment of the gentleman from Ontario [Mr. Folger] adopted, would have no effect to prevent any thing of that kind.

Mr. FOLGER—It is doubtless true that a statute conferring benefits upon a party, may be called a contract, and is held to be a contract; but I think the gentleman did not understand me, when I said that, there is another clause in the latter part of the act, reserving authority

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to alter, amend and repeal a part of the contract; and when the university advances money it does it subject to that clause of reservation, that the act can be altered or amended at any time. As I said before, what the effect and force of such a clause in an act may be, I believe, we have, as yet, no judicial determination in this State; but if it is to be carried to the full effect that the Legislature may, at any time, of its own will, and capriciously, if it chooses, alter, repeal or amend this act, then the incorporation of the Cornell University with the donation of this fund, is no more than a license revokable at the will and pleasure of the Legislature. No person can say that so munificent an undertaking as this university should be dependent upon the caprice of the Legislature from year to year. It will require a series of years to develop all the results that are calculated upon; there should be something in the organic law which will insure this to the university, and those interested in it in perpetuity if it perpetually fulfills its obligations.

Mr. BELL—This whole matter resolves itself into a very narrow compass under the explanations given in regard to the acts of Congress and in regard to the dispositions made of the lands by the Legislature. The only question left for us, it seems to me, is this: does this Convention think it advisable to ratify that act of the Legislature and place this matter in the Constitution where it may be irreversible, and become the settled policy of the State for the next twenty years. It occurs to me that this is all there is of the question. Those who do not take that view of it, of course think best that it be left to future legislation, and that the same manipulations and the same tactics may be used in regard to this fund as it is now donated, as have been used and that were used when it was being donated and appropriated to this particular institution. I am clearly of the opinion that this Convention should ratify the act of the Legislature on this subject.

Mr. CURTIS—Before the vote is taken on this amendment, sir, I should like to state some of the facts in regard to this grant and to the Cornell University and to the relation of both to the interests of the people of the State. In July, 1862, the grant of these lands was made to various States according to their representation in Congress, and the portion of the State of New York was very nearly a million of acres. The scrip so given to the various States has at this time been entirely absorbed. Twenty-two of the States have accepted the grant and have made various dispositions of it. Of these twenty-two States eleven have joined the fund to those already existing in certain institutions; eleven have established new institutions to be founded on this grant, and only one, Massachusetts, has made any division of it. Massachusetts has allowed three-tenths to the School of Technology in Boston and seven-tenths to the Agricultural College at Amherst. Now, sir, this noble grant being made to the various States, a grant intended to conserve the highest conceivable interests of a free people, we find, and naturally with pride and pleasure, that a citizen of New York alone of all the citizens of the United States, comes forward to receive the offer made by the Congress of the United States, and says, "I will do all that I can; all that my energies, my time and my resources will allow, to make this grant worth twice, three times, four times, five times its nominal and apparent value." The other States, sir, I say, have disposed already of this scrip, and from the State of Kentucky comes an admiring and regretful cry, "See what New York has done with this grant!" Nor is there a single State, or a single citizen anywhere in this country, who does not feel that the State of New York is making the wisest use of the opportunity. Now, sir, when this grant was made, it became the duty of the State of New York to dispose of it. It accepted the grant in March, 1863. It was well understood that it had been made by Congress in pursuance of certain representations at the Capitol, and that the foremost among those who were urgent was a gentleman interested in an institution already mentioned in the debate, the People's College, at Havana. The State, in disposing of this grant, might, indeed, either distribute it among the various colleges, or give it to some single college. But the distribution of the fund, Mr. Chairman, would have been simply throwing it to the winds, throwing it into the sea. There is no gentleman familiar with the history of education who does not know that the higher institutions of education in New York are staggering, that at this moment, New York, first in population, first in resources, first in energy of all the States in this country, is not first in the standard of the higher education. There are various reasons to be assigned for this fact, which before the debate on this article is concluded may come before the attention of the committee. But one of the chief, one of the cardinal reasons of that fact is the inadequacy of the endowment, upon which these various institutions rest. I think, therefore, that the Legislature of this State, upon due deliberation, wisely determined that at least the grant of the United States should not be thrown away, that it should not become the prey of the rapacity of contending interests in the Legislature. Then the question arose whether it should be given to any institution already existing. There was some thought of giving it to the Agricultural College at Ovid. The Agricultural College at Ovid, however, lay under the disability of a mortgage of seventy thousand dollars, which must first be raised before it could enjoy the benefits of the fund, and the trustees of that college agreed that the grant should go elsewhere. It was then offered under certain conditions, to the People's College, of which the gentleman from Schuyler [Mr. A. Lawrence], has already told us. Now, Mr. Chairman, the history of the People's College in relation to that grant, is surely a history the gentleman from Schuyler [Mr. A. Lawrence], cannot wish to have repeated. It is not a creditable history, certainly, to that institution; I mean that it is not creditable, upon the supposition that it really wished to enjoy the benefit of this grant. Let me mention one or two facts. One of the conditions was that within three years, there should be ten professors at that college. But, when, after the lapse of two years, five years being the time allotted by Con-

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gress as the limitation of the benefit of the grant, the Legislature, wishing to know whether the People's College was really deserving of this grant, by complying with the conditions, requested the Board of Regents to appoint a committee to visit and inquire into the state of the affairs of that institution. It was found as to this first condition of ten professors—two years having elapsed, one year only remaining—that there were three professors, none of whom—I say it, of course, without the least personal feeling—none of whom were eminent in their various departments. The college at that time had been in existence some twelve years, and in its collegiate department—two years of the three allotted having expired—there was not a single student. There were certain students in what was called the preparatory department—that is to say, there were certain young men fitting themselves to enter college. As to the building, it was one of the conditions that the college should furnish accommodations, within a specified time, for two hundred and fifty pupils. It was found upon examination that there was a building which, by putting two students in a room, would probably accommodate one hundred and fifty students; nor had there been any provision for heating the building or furnishing it. So with the outhouses and the farm. There was to be a farm of two hundred acres for the purposes of the school. There was, indeed, a farm of two hundred acres, but at the very time of the visitation of this committee there was a bill pending before the Legislature to release the college from the necessity of holding more than one hundred acres. Then, finally, sir, in regard to the matter which my friend from Onondaga [Mr. Alvord] has cited, it was a further condition that as none of the funds granted by the United States could be laid out in buildings or erections of any kind, the property should be perfectly unincumbered. Now, sir, the gentleman who was hoping to build a college to his name in the People's College had at that time a deed of more than $30,000 upon the property of that college. The Legislature of 1862 had passed a law granting $10,000 to the institution, upon condition that this gentleman released his claim. He declined to do it. The same offer was open to the college for a second time. The gentleman still declined. But when it was perfectly apparent that the grant was likely to be taken away from the college, the gentleman came forward and offered to relinquish his reversionary interest, provided the endowment of the college was put beyond question. He was not willing to make that relinquishment the condition of its being an absolutely free institution, but would relinquish his claim on condition that other persons should make it free. And therefore it was, upon the report of this committee of the Board of Regents, that the Legislature at once declared that not only was there no compliance on the part of the People's College with the intention and condition of the act of the Legislature, but that, humanly reasoning, there was evidence of no intention of compliance. Then, sir, it was that a citizen of this State appeared and said, "I will give $500,000 upon condition that the institution which shall be founded by that sum shall receive the avails of the United States grant." Mr. Cornell, who made this offer, added to it a farm, which was required in the conditions of the act, the estimated value of which was $50,000. He had already bought for the purposes of the university the Jewett paleontological collection of the State of New York, unquestionably the finest in this country. His other gifts of various smaller sums to the institution amount already to twenty-five thousand dollars, and in the town of Ithaca, in which he proposed that his institution should be planted he had erected, at an expense of nearly one hundred thousand dollars, buildings for lecture rooms and lyceum purposes, which of course were at the service of the institution which was to be erected. Now, Mr. Chairman, a man who should say "I will give five hundred thousand dollars, provided I can have the benefit, and you will allow me to buy the land scrip which the United States gives you," would certainly be considered, in any State, a great benefactor. But here was a citizen not content with this. Here was a man who said "I will give five hundred thousand dollars upon condition that the avails of this land grant shall be given to that institution; and I will bind myself that all the profits which I may make from the transaction, shall also be devoted to the purposes of the university." Not for any selfish purpose, not for any individual purpose; they were to be given for the benefit of the people of the State of Now York forever. Mr. Chairman, I confess I have no words to express my sense of the greatness of this act. I think that the gentlemen of the committee should for a moment reflect what it is that one of our fellow citizens has done. We are all honored by this act of Mr. Cornell. The State is honored. The country is honored. Our children to the latest generation are benefited by this wise generosity. Many men, sir, in dying, have given great sums of money to found colleges, to build hospitals, to establish libraries. States and governments have taxed themselves for the same purpose, and it was well done. But, sir, here is a man, a private citizen, who in the ripe vigor of his life, gives a princely fortune, who adds to it his experience, his knowledge, his sagacity, his industry, his enterprise, and then gathers all together, and consecrates them, not to a personal purpose, not to an individual end, but to the highest common welfare. I like to believe, Mr. Chairman, that an act like that of Mr. Cornell's is the natural growth of the American system, in which the deed of the simple, private citizen outshines the magnificence of kings. Well, sir, the State, upon this consideration, made the agreement with Mr. Cornell. By the terms of the act, ingeniously, elaborately drawn, he is prevented, under any circumstances whatever from recovering a single dollar of the money which he has so given; and the State, therefore, in consideration of his gift, of the necessity of concentrating the advantages of this grant for the purpose of agricultural and mechanical education in the State, and because of the enormous increase thus secured to the grant, makes with him a contract, pledging the good faith of the people of the State of New York to Mr. Cornell,

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and to the university which is to be established, a university which if it fails to observe the conditions, as provided by the amendment of my friend from Ontario [Mr. Folger], will pay the penalty. Now, sir, the proposition of the gentleman from Schuyler [Mr. A. Lawrence] amounts to this: Having secured from Mr. Cornell this money, this gift being made by him absolutely, and without return, the State upon due consideration having said to him, "If you will give this money and conform to these conditions, we will give you the avails of the land scrip grant" —the proposition, I say, sir, of the gentleman from Schuyler [Mr. A. Lawrence] is, that the State shall open at every session of the Legislature the question whether this grant shall not now be dispersed, a portion given here and a portion given there. Of course the gentleman from Schuyler understands what the inevitable result of this will be. Every institution in this State which thought itself able, by the assistance of this grant, to establish a chair of agriculture, chemistry, or practical mechanics, at every meeting of the Legislature, either singly or in combination, would press, and press, and press the plea that the Cornell University had certainly had the use of this grant long enough, and it was high time that other institutions in other parts of the State should derive some benefit from it. Sir, the truth is this, the people of the State of New York, in their Legislature, pledged their faith. There is no question of that. It is, as the gentleman from Ontario [Mr. Folger] says, a contract between the people of the State and the Cornell University. They put it in the form of a statute. What do we propose to do now? Simply that the people who upon deliberation have done this, and have bound themselves as far as was possible at the time to do it, shall now put it into the fundamental law, because they mean it to be a fundamental act. And here in the Constitutional Convention, the people are afforded the opportunity of ratifying this contract made in their name. They will say: "We mean that Mr. Cornell, having done what we require him to do, we also will do what we promised Mr. Cornell we would do if he would conform to the conditions we laid down." But, sir, I can hardly speak of this point with proper tranquillity. It is virtually in its nature an immoral proposition—of course without the slightest question of the motives of the gentleman from Schuyler [Mr. A. Lawrence]. It is leaving the State an opportunity which, it seems to me, is not granted to the Cornell University. But, sir, by the amendment of the gentleman from Ontario [Mr. Folger] every possible objection is removed. By that amendment it is made perfectly evident that until the university fails, to observe the conditions, it is the intention of New York that it shall enjoy the grant. It may be interesting, sir, to the Convention, as representatives of the State of New York, to know that in September of this year the Cornell University will open. Of the twenty-six professorships to be established seven are devoted to topics of immediate practical value. They are devoted to instruction in mechanics and agriculture. The University College at New Haven, Yale College, of fifty-three professors, has four chairs of the same kind. Of the twenty-six Cornell professors there are four already selected. Those four are young men and yet they are four young men who, by the common consent of the most eminent men of science in this country in their department, Professor Agassiz of Cambridge being at the head, are the four men of the most promising talent, and the most admirable scientific attainments. Of the occasional lectures which are to be founded in that university, Professor Agassiz himself has promised to give a course; Professor Pierce of Cambridge, perhaps the first living mathematician, has also promised his co-operation. I do not know, and my acquaintance is extensive, of a single man, in any State in this country, interested in science or literature or scholarship of any kind, who has not the most vital sympathy with the Cornell University. We are to have there the services of the highest genius of the land. The resident professors, under the chairmanship of the president, are such men as I have described. The term will begin in September. The actual receipts from the endowments are such as to promise an ample resource for the opening of the enterprise. The farm is furnished; the various scientific collections are either made or making; the apparatus is both collected and collecting; the library will be selected, in great part during the coming summer, and the university will begin as such a university ought to begin in this State, under every possible fair auspices of success; and yet—for I will leave nothing, however low, untouched—I have heard that the proposition of the committee is a proposition to put a single citizen of the State of New York into the Constitution. It is a proposition to constitutionalize Mr. Ezra Cornell! Mr. Chairman, it seems that some are resolved to make generosity difficult by making it suspected. I have heard very frequently during the term of this Convention a sneer of this kind, and I stop simply to put my foot upon it. It is the Cornell University, and perpetuates his name. When this objection was made, Mr. Cornell—the university not having been named by him or by his request—Mr. Cornell, when this remark was brought to his notice at a meeting of the trustees, desired that his name should be stricken out. "My object," said he, "is not to immortalize my name by having it in the university. My object is the public welfare, and I beg that my name be stricken out." Of course, sir, the trustees of the university, in obedience to a very natural and a very praiseworthy instinct in human nature—the same instinct which called Harvard College, Harvard; Yale College, Yale; Dartmouth College, Dartmouth; Brown University, Brown—at once and unanimously declared that the title of this university should be the Cornell University. And so it was further objected that the charter introduced the principle of hereditary succession, that the oldest lineal male heir of Mr. Cornell is always to be one of the trustees. This also being brought to his notice, Mr. Cornell requested that any such principle should be instantly thrown aside, that he had no desire that the influence of his family name in the university should thus be perpetuated.

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But the trustees, in obedience to the same instinct, at once declared that that should always be a part of the law. And thus it is, Mr. Chairman, that all the personal renown which the founder of this great institution derives from it is the simple identification of his name with his superb foundation. The case seems to me to be so plain, the section as amended by the gentleman from Ontario [Mr. Folger] so reasonable, the objections as urged by my friend from Schuyler [Mr. A. Lawrence] so unsubstantial, that I trust the Convention, coming fresh from the people of New York, will declare that the people of New York, having pledged their word, intend faithfully to keep it to the end.

Mr. M. I. TOWNSEND—It is an unpleasant duty for any man, if he feels it necessary to do so, to place himself in the apparent attitude of resisting the current of kindly feeling that flows out toward those who have done a great good. Now, sir, I wish to protest, at the commencement of my remarks, that in what I say I am not to be construed as lagging one whit behind my friend who has just taken his seat, in my admiration of the giver of this munificent gift that my friend has so eloquently eulogized. It is a noble act. It is not only noble, as compared with the ordinary acts of others, but I esteem it immensely more noble, because this act was done in the maturity of the giver's life. He has not waited until his death-bed, when he had done using his fortune, and then robbed his heirs by giving it away for a purpose that he was not willing to devote it to while in the maturity of his faculties, and able to enjoy it as the world enjoy their fortunes. But my friend must not forget, and this Convention must not forget, that Ezra Cornell is not the first man in the history of the world who has bestowed his beneficence for the benefit of his fellow-men. Oxford and Cambridge owe their endowments to the gifts of munificent patrons in the olden time. The celebrated Cardinal Woolsey, from his own means, built Christ Church College, and endowed it forever. And so it was in regard to the other colleges connected with those universities. They owe their existence almost entirely to the munificent gifts of individuals. And after the high panegyric that my friend has uttered here of Mr. Cornell, it should not be forgotten that we have other citizens contemporaneous with ourselves, and contemporaneous with this munificent public benefactor in the State of New York, who have given liberally of their funds for the benefit of education and the improvement of the race. I call his attention to Mr. Vassar, who has given a sum greatly disproportionate to the sum given by the gentleman whose name has been mentioned here, amounting to a good many times what the gift of Mr. Cornell has amounted to. He has not only given this sum, but exclusively from his private means has built the buildings for the use of the institution which he has created—has done it already—and he proposes in that institution to educate the voters of the State. For when the notions of the gentleman from Richmond [Mr. Curtis] of public policy are fully carried into effect, the voters of the State are to be educated at the university founded by Mr. Vassar. I would not, because Mr. Vassar has given more than Mr. Cornell, fail to do the least item of justice to Mr. Cornell in every possible respect, but I mention Mr. Vassar to the end that this Convention may not, in listening to the eloquence of my learned friend, forget that there are in this State other liberal men and other public benefactors besides this one, and not thrust this university into the Constitution in the forgetfulness that there are other benevolent and good men besides. Now, as I said, I have not the least possible hostility to Mr. Cornell, nor to Mr. Cornell's institution. This is a thing of the future; and I hope that in the future it will be every thing that my friend from Richmond [Mr. Curtis], and my friend from Columbia [Mr. Gould], suppose that it is going to be. I hope that that institution in coming time will extend the sphere of its action and influence from among the stars, among which one of the gentlemen has seemed to locate its operations, down through the whole system of human knowledge to those weevils that my friend from Columbia [Mr. Gould] has spoken of, and the still smaller parasites that prey upon them. [Laughter.] I have no wish to disparage the action of this institution. I would live up to all the State has done, to the letter of it, and the spirit of it, honorably; but yet I cannot believe that I am acting immorally to leave those statutes simply in force. I do not believe that it would be immoral in this Convention to refuse to put this institution into the Constitution of this State, and to say that as long as this Constitution shall stand, the Legislature shall have no control over the funds that are mentioned in the clause in the first section of this proposed article that the gentleman from Schuyler [Mr. A. Lawrence] refers to. I distrust all propositions to create constitutional guaranties and guards in cases where they are not necessary. This world changes. Circumstances in the world change continually. Mr. Cornell may be dead to-morrow. Mr. Cornell may be bankrupt to-morrow. The good men, and the excellent men, and the intelligent men, that now constitute the board of trustees, may be dead to-morrow, and a set of men who knew not Joseph may be in their places. [Laughter.] What shall be the policy of that institution when these new trustees come in? What heresies of public politics, what heresies in religion, what heresies in the theories of life may yet creep into that institution when they are gone, neither these gentlemen themselves know nor I know? This institution may live up to the requirements of the laws that have been put upon the statute book, and under which Mr. Cornell is entirely satisfied to make the advances of his money as he has been making them. Every thing may be correct; every letter and figure may be complied with. And yet, although I do not believe it probable, I would remark, it would seem morally impossible, yet it is actually possible that the institution itself may become a nuisance in the midst of us. What gentleman here does not believe that it would be for the good of England to-day, had their parliament the power of legislating in regard to Oxford, the most magnificent institution of learning in the world, existing to-day to belittle the minds of men

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and emasculate them; with all its immense libraries, with all its immense professorships, with all its immense fellowships, and really lagging behind the age, and throwing its weight into the scale of the past and the effete? And yet it is proposed here that we shall put this portion of the funds of the State, to be managed for the people of the State as long as this Constitution shall exist, beyond our control. It is said that there are certain gentlemen that will be *ex officio* members of that institution. What will be the use of their being *ex officio* members of that institution? They will be in a minority. The Constitution will have prevented their doing any thing, and they might as well stay at Albany, as to go to the meetings of the board of trustees. If there is any thing they are not satisfied with, they must take it out in being dissatisfied. They will be ornamental rather than useful. I protest that when I express to this Convention my unwillingness to put these funds beyond the control of the State I am not acting immorally. There is no immorality about it. On the contrary I claim that it is immoral for the officers of this State, men that have been endowed with power, such as we possess here, from the votes of the people of this State, to put the funds of the people of this State or any portion of those funds beyond their reach for all coming time. It is there, according to my conception upon this subject, that the immorality lies. I am very desirous that this experiment should succeed, as much so as any man. Having all that I possess in this world invested in the soil of the country, bred an agriculturist, having now all my interest in agriculture except the little that I derive from my profession, I am free to say that this cry of agricultural colleges produces a great deal less effect upon my ears than it would have done if I had not heard the cry for thirty years, and seen thirty years of most disastrous failure. The mere agricultural part of the education here is not to constitute the strength of that institution, if it is to have strength. I hope it will teach those sciences that are immediately connected with agriculture, and teach them thoroughly and thus distribute a much more extensive knowledge of these subjects than is now possessed by the country.

Mr. CURTIS—Will the gentleman allow me to interrupt him for one moment? He will remember, whatever his views on agriculture, or the benefit of agricultural and mechanical colleges, that the act of the United States requires that this money shall be given to the endowment, support and maintenance of at least one college, where the leading object shall be, without excluding other scientific and classical studies, and including military tactics, to teach such branches of learning as are related to the agricultural and mechanical arts. So far as that is concerned, it is the intention of the United States, that whether agricultural or mechanical schools are good or not, they shall have the benefit of that grant.

Mr. M. I. TOWNSEND—My friend is right about it, but he has certainly failed to appreciate the scope of my remarks. And let me say further, it was not to what my friend from Richmond [Mr. Curtis] said on that subject, but to what my friend from Columbia [Mr. Gould] said on the subject, that I was addressing myself. The mere fact that an institution is to teach its pupils on subjects connected with the agriculture of the country, does not furnish a reason why we should in this case depart from the wisdom that has hitherto controlled the legislation of the State in regard to other institutions and other matters with which the State is connected. It is said the State has pledged itself to Mr. Cornell, but the gentlemen concede, at the same time, that in the very acts in which the State pledged itself to Mr. Cornell, the right of repeal, amendment, and modification, was retained; and Mr. Cornell, knowing that the right of repeal, and amendment, and modification, was contained in these acts, made his bestowments and gave his charity. What do gentlemen propose now? Not to continue that state of things. If the gentlemen propose to continue the force of those acts, with the right of repeal, amendment and modification, it would be immoral not to continue it; but they propose now, by virtue of the reputation which Mr. Cornell has obtained by his charities and liberality, to strike out from those acts the saving clause, by which the people of the State of New York protected themselves when these laws were enacted. If that be wise legislation, if that be wise constitution-making I grant you an utter lack of wisdom so far as I am concerned. I do not understand that it is wise or politic that the State should give up its control over its own funds, and its own money. The State is connected with a thousand other enterprises—a thousand will not count the number of enterprises with which the State is connected, in some shape or other. We do not propose to put any of the rest of them into the Constitution. We proposed to constitutionalize charities the other day, but gave it up. I trust that we shall not constitutionalize this. And while I hope that the State of New York will live up most sacredly to the obligations it assumed in the enactment of these laws, in entering into the arrangement which it did enter into with Mr. Cornell, I hope that the State of New York will provide against all possible contingencies (I will not repeat the contingencies, for I have repeated them enough already) that may by possibility arise; and will retain in its own control the threads that shall ravel out any errors or mischiefs that shall grow up in the history of the future in connection with this institution. Believing, however, at the same time, that the Cornell University will be a success; hoping, in heaven's name, that it may be a success, feeling that if successful it will be an ornament and an honor to the State, I yet feel that, sitting here as one of one hundred and sixty guardians for the time being of the public interests of this State, I am not at liberty to put such a proportion of the funds of this State designed for educational purposes, beyond the control of the people of the State.

Mr. VERPLANCK—I would like to ask the gentleman whether there is any educational fund that is not taken care of and disposed of by the Constitution except this?

Mr. M. I. TOWNSEND—I will state, if the

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gentleman will allow me. Mrs. Willard gets up an academy that is a success. If it continues a success it receives yearly its share of that fund for the institution. If the institution goes by the board and does not keep itself in such circumstances as all other institutions must keep themselves in, it does not share in any of the funds. There is no other instance in the State, as I understand it, where any of the funds of the State are devoted to any other institution by name, so that if the institution fails to comply with the requisitions of the law, under the Constitution, the funds must still go to it.

Mr. VERPLANCK—The gentleman has hardly answered my question. It may be that the people of the State, through the Legislature, would desire to take the literature fund for the benefit of the common schools, and not reserve it for those favored institutions, the academies of the State. Why not leave it where the people of the State can control it? That is the argument of the gentleman in reference to the Cornell University fund. Keep it where the people can control it through the Legislature. The same doctrine precisely would apply to the literature fund.

Mr. M. I. TOWNSEND—The gentleman from Erie [Mr. Verplanck] can scarcely be serious. Although not given to joking he certainly is joking on this subject. [Laughter.] To undertake to say that there is any comparison or any point in common between the provision of the Constitution that devotes to academies certain funds, and leaves the Legislature at liberty to say under what circumstances the academies shall have the control of those funds, or any residue of those funds, and under what circumstances they shall cease to be entitled to have any funds, and which applies this fund to all the academies of the State equally, and the proposition to donate them to any institution irrevocably—certainly the gentleman cannot be serious.

Mr FOLGER—If we eliminate from the argument of the gentleman from Rensselaer [Mr. M. I. Townsend] his characteristic humor and his characteristic ingenuity in stepping aside from the true course of the argument, I think his views may be reduced to these two propositions: in the first place, that this constitutional provision should should not be adopted, because the policy of the Cornell University may be changed, and then this university and its fund will be out of the control of the people; second, that he would not, on any account, put in the Constitution a provision giving these funds in perpetuity to this institution. As to the first of these propositions, that the policy of the university may be changed, either by the death of the founder or by a change of the trustees, it seems to me, that is not involved in this question, for there is nothing in this constitutional provision which inhibits the Legislature from visiting it by any provision of law; and if its policy is changed, if the trustees choose to step aside from the requirements of the act creating it, or to institute such a policy of teaching politics or religion, or any vagary, as may be distasteful to the people, there is nothing in the proposition now under consideration which forbids the Legislature from repealing the act which creates the university

Mr. M. I. TOWNSEND—Will my friend from Ontario [Mr. Folger] allow me to ask him a question? If we recognize in the Constitution the Cornell University as an incorporated body now existing, and bestow funds upon that institution as it now exists, will the Legislature retain the power to repeal or modify the enactment under which that institution has its organization? Will it not be crystalized in its present shape in the Constitution? Will it not be necessary that the institution should exist as it is now in order that it may receive the funds which go to it because it exists?

Mr. FOLGER—I think nothing more will be crystalized in the Constitution than we put in the form of a crystal. Now we do not put in the Constitution in the form of a crystal, or crystalize any particular policy, or any particular power in these trustees to create a policy, or to deviate from a policy; all we say is, by my amendment, that this college scrip fund shall be devoted in perpetuity to that institution so long as it complies with the conditions under which it was created; that so long as this fund shall be paid to the officers of this institution. But when they come, if they do, to teach a particular tenet in religion, or a particular heresy in politics, or any other vagary which is unacceptable to the people, the people hold the right to exercise the control reserved to them by the last clause of the act authorizing the Legislature at any time to alter, amend or repeal the charter. Certainly if the university is there yet, its financial officer, under this constitutional provision, will receive these funds; but there is nothing in the Constitution which says that they may devote those funds to any particular purpose, or any purpose aside from that recognized and anticipated by the act creating them. Therefore, it seems to me, this branch of the argument of the gentleman from Rensselaer [Mr. M. I. Townsend] falls to the ground; that there is no danger of our locating and sustaining in the midst of us by the funds of the people, any institution which shall degenerate into teaching vagaries of religion or politics. Then comes the other proposition, and it is a question of expediency for every gentleman to determine; and it seems to me, the substance of the question is this: shall we put into the Constitution what we have already put in the statute book? Are there arguments sufficient to induce this Convention to follow the same course which the Legislature followed? That course is to devote to this single institution the income of this fund. Have arguments been presented here—do they exist in the nature of things, and in sound reason—why one institution shall receive the benefits of this fund forever, and why no other institution shall divert it from them? Men may differ about that. For my own part, I have become convinced, although once opposed to that idea, that we can only succeed in making this fund largely useful by confining it to one institution, which shall grow up in a manner commensurate with the object designed to be accomplished when the funds were appropriated to this institution. The question is presented to us, as if we were sitting here as legislators, discussing about the advisability of the act giving these funds to the Cornell University. Would we do

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it? Would we do it upon the conditions contained in the act incorporating that university? That is the only question presented to us. The desire is that, we, as a constitution-making body, shall put in the Constitution the same form and condition of the contract which the Legislature made with the Cornell University, and no other, reserving to the people, through their Legislature, the same powers which the Legislature reserved to itself in the act which created it. Now, if gentlemen here have been convinced, either by their own reflections or by the arguments of the gentlemen from Columbia [Mr. Gould] and Richmond [Mr. Curtis] that it was a wise appropriation by the Legislature of these moneys, to give them to the Cornell University, I see no reason why they should hesitate to make a constitutional provision of what is now merely a legislative provision; for it is provided by my amendment, that, we retain the control of this institution if it departs from or violates the condition under which it is created. The necessity of a constitutional provision is this: to prevent the constant annoyance which might occur from interested persons applying to the Legislature, for a division and diverson of this fund from it. I need not say to the gentleman [Mr. M. I. Townsend] with the chronic nausea of legislation which he has, and which he has eructated upon us from day to day, that it would be an annoyance to the trustees of this university to be day after day and year after year, anticipating and contending with a request to the Legislature to alter, repeal, or amend the appropriation of this fund. The only object is to prevent that; but not to take away from the Legislature and from the people the power to repeal the act when the conditions under which it was made shall be defeated, when this institution shall devote its endowment to wrong purposes, or shall fail in any way to perform the conditions under which it received its fund.

Mr. M. I. TOWNSEND—I feel it my duty, in answer to the gentleman from Ontario [Mr. Folger], to "eructate" a few moments longer, although it may be offensive to the trustees of the Cornell University who desire to use their position in this Convention to thrust their favorite pet into the Constitution of the State.

Mr. CURTIS—Which of the trustees are present?

Mr. FOLGER—I am a trustee.

Mr. M. I. TOWNSEND—I undertake to say, as a lawyer, and I call upon other lawyers here to set me right if I am wrong, that if we adopt the proposed provision in the Constitution, the Legislature will lose the power to alter, modify or amend the conditions of the grant made to that institution. And as we lawyers are fond of quoting eminent authority for our opinions, I quote the opinions of the three gentlemen who have set themselves forward in advocacy of this measure, and who have delivered opinions upon this floor. It has been said by these gentlemen, over and over again, that they desire that this should be put into the Constitution to the end that it shall not be altered or amended by the Legislature; and when I find myself sustained by such authority, I shall feel that I am in the discharge of my duty in "eructating" my views, which, on this point, at least, happen to agree with those of the gentleman.

Mr. ALVORD—I do not desire at this time to go into any extended debate on this matter, because I think it has been fully gone over by my friend from Richmond [Mr. Curtis] and the gentleman from Ontario[Mr. Folger]; but I desire to impress one single idea upon the mind of this committee which it seems to me has not yet been fully understood by the committee, or mentioned in the remarks of the gentleman from Richmond [Mr. Curtis]. In 1863, as has been stated, a certain amount of land was given to each one of the States of these United States in proportion to the number of their members of Congress. The result of the gift of a large body of land or at least land scrip representing this body of land throughout the United States of America, was the consequent depression in the price of the scrip in the money markets of the country, as has been stated by the gentleman from Ontario [Mr. Folger]. The first sale of the scrip in this State brought a little over eighty cents; and but a very small proportion of the scrip was sold: it was a matter of grave and serious concern, on the part of the State officers, acting under the statute as advisers to the Comptroller what should be done with this scrip. Others of the States of the Union were rapidly putting it on sale, and it was rapidly depreciating in the market until the State of Vermont sold its entire amount of land scrip for sixty cents an acre; and it went down in the market of the country in 1866, to the sum of fifty-five cents an acre, and a very small portion could be sold at that price. Other States were pressing this scrip on the market to such an extent that it reduced the price to the point I speak of. Then in addition to all that Mr. Cornell had done in the way of endowment of the institution called the Cornell University, carrying out fully and completely the agreement which had been made up to that time, as between him and the State, he steps in with his vast resources and ability and makes a proposition to the people of this State in reference to this land scrip. The State of New York, under the terms of the grant from the United States of America, had no right itself, as a sovereign State and the owner of the land scrip, to go into the western country and there locate the land and hold on to it until it should rise in value. That advantage was only given to the States in which there might be public land belonging to the United States. Therefore the State of New York, as a State, neither by any enactment of its own nor by the act of its public officers, could locate this land themselves and wait for the natural rise of the price of the land; and Mr. Cornell made this proposition: that he would take this land scrip in quantities from time to time, as much as might be necessary for the purpose of enabling him to locate it correctly, and he would give into the State treasury thirty cents an acre, absolutely to make the college land scrip fund; and he would then proceed to sell these lands, and would take the first thirty cents of profit and put it also in the land scrip fund, making it sixty cents an acre, or five cents more than the scrip was then selling for in the market. But

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he agreed (and his agreement is a solemn and binding one), in addition thereto, that he would locate this land and that he would sell it from time to time, not at his own motion, not at his own figures, but at a minimum price, to be fixed by the officers of the State, and after deducting the expenses of the operation and the interest upon any money that he might expend in locating the land, any remaining profits thereof should go into the public treasury of the State as an endowment fund for the institution. Now, sir, there have not been more than one hundred thousand acres of this land sold outside of the reach of this agreement upon the part of Mr. Cornell. The remaining portion of it has been placed in his hands from time to time, so that a very large proportion of it, more than half, has already been located; and such has been the appreciation in the value of those lands already located that, without undertaking to overstate it, I can say here that beyond any moral doubt whatever, instead of this producing as a fund for educational purposes the pitiful sum of $550,000 or $600,000 (as much as it would have produced if it had been sold as originally contemplated, and as has been done in other States), it must of necessity produce over two millions of dollars as the result of the sale of these lands, under this arrangement by Mr. Cornell. Now, I hold that whereas he has gone into the agreement, and has put his great energy and sagacity as a business man into this matter, and has added to that energy and sagacity also the moneys now enjoyed by him, he is as well entitled to the credit of paying $1,500,000, the amount over and above what the State would otherwise have realized, into the treasury, as he is entitled to the credit of having paid $500,000 for the foundation of the Cornell University; so that any bequest or gift for educational purposes that has ever been given within the limits of the United States of America, by any individual, living or dead, falls into insignificance by the side of the magnificent one of Mr. Cornell. Another thing, sir. I think that it is due to this occasion (inasmuch as public records should be made to a certain extent of all the doings in this regard), to say, from my knowledge of the fact, that there seems to have been more hesitation upon the part of Mr. Cornell himself than upon the part of any of his family. His sons, young men, active, vigorous, and just starting in life, his wife, his daughters, have all stood by him and urged him on in this regard, so that what Mr. Cornell has given to the cause of education has not been taken from the heirs expectant, but has been given with cheerfulness and with the entire consent and approval of those heirs, when they were aware that possibly an attempt on their part to prevent the gift would have been successful. Now, I do think, and at the risk of repeating what has been said by the gentleman from Ontario [Mr. Folger], I say here, that it is the height of folly on the part of the people of this State, to undertake by any possible means to permit a loophole to exist where there might be a diffusion and scattering of this immense grant by the United States to the people of this State. And if there is any excuse needed for putting this into the Constitution of the State of New York, it is that it is demanded we shall thus secure this grant, to one single purpose, and have it under one single control, whereby the aggregate of the entire amount shall be kept together, and thus its full benefit shall be had, rather than that divided and scattered, its strength shall fail, and become weakness, and thus the great benefits that were hoped to be derived from it shall be lost to us and our children forever.

Mr. GOULD—I have not the vanity to suppose that I have the power of gilding refined gold or of painting the lily, or of adding perfume to the violet, and therefore after the eloquent remarks of the gentleman from Richmond [Mr. Curtis] and the exhaustive argument that he has made I should have preferred to submit the subject to the grave consideration of this Convention uninfluenced by any words of mine; but the remarks of the gentleman from Rensselaer [Mr. M. I. Townsend] seem to call for some answer in addition to that which they have already received, and I propose now to answer a few of the points made by that gentleman in order that the whole subject may be clearly before the Convention. He has told us that the *ex officio* officers of this university amount to nothing, that they might just as well not be there as to be present in the deliberations of the board. He alleges that it is a self-perpetuating institution and that it will assuredly crystalize into certain ruts of education which it will be absolutely necessary for the Legislature to interfere with in the future. But the gentleman has not told this Convention that there there are seven of those *ex officio* members, the Governor of the State of New York, the Lieutenant-Governor of the State, the Speaker of the Assembly, the librarian of the Cornell University, the president of the State Agricultural Society and others, amounting to seven in all. That, sir, does not look like crystalization. All interests are represented. The president of the State Agricultural Society, elected annually, and changed at each election, is a member of that board. Now, seven men constitute a powerful minority. They constitute a body, which, although a minority in the board, can exercise a very important influence in it; and, sir, it is not a self-perpetuating institution, as I remarked when I was up before. There is a provision by which the graduates of the university, after they shall number one hundred, have a right to be represented in the board, and they also have the power of election, so that there is ample provision against any such crystalization as the gentleman from Rensselaer [Mr. M. I. Townsend] supposes would take place. Then again the gentleman has alleged that this institution may teach some sectarian doctrines that are disagreeable to the people of this State. Well, sir, the very charter of the institution, its fundamental law to which alone it owes its existence, provides against that. It provides expressly that the board of trustees shall not consist at any time of a majority of any one denomination, and also that it shall never consist of a majority of those who are of no denomination whatever; so that you can never have exclusive sectarian influence nor exclusive infidel influence in that university. So far as human sagacity can

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guard against difficulties of that kind the charter of the institution does guard. I need not repeat what the gentleman from Ontario [Mr. Folger] has said, that the guaranty to this institution is not a guaranty for the perpetuation of the corporation known as the Cornell University. It still very properly reserves to itself the power of repealing the charter of that institution in case the necessity should arise. This constitutional provision does not interfere with that power at all. But it is alleged by the gentleman from Rensselaer [Mr. M. I. Townsend], that no other institution of learning in the State is put by name into the Constitution, and he has cited to us the case of Mr. Vassar, who has certainly been exceedingly liberal in endowing educational institutions. But why is not that institution in the Constitution? Mr. Vassar has never sought for any such provision as that which we propose to make for the Cornell University, and it was not necessary for the purposes of the institution he endowed. He gave, knowingly, a certain sum of money for the foundation of a female seminary. The Legislature did for him all that he asked and all that he desired; no other institution can, under any circumstances, claim a dollar of its funds, but the circumstances of the Cornell University are different. The grant from the State proceeds upon the assumption that if Mr. Cornell makes a liberal provision of five hundred thousand dollars for the endowment of the university, the State also will make a similar provision. These are mutual considerations in this case between Mr. Cornell and the State, and that is why it is an exceptional case, and it is because there is no other institution in the State where this mutual contract exists, that there is no necessity for a constitutional provision like this in reference to any other institution. It has been said here that Mr. Cornell made this gift with the certain knowledge that the Legislature reserved the right of withdrawing or altering it. They certainly did reserve that right, and Mr. Cornell knew the fact, and he knew that the Legislature was prohibited by the Constitution from making the grant on any other terms, but he had faith in human nature and he believed that when the people of the State of New York came to revise their fundamental law, as they must do this year, they would correct that mistake and would ratify the bargain already made by their representatives; as I sincerely trust they will do. Now allow me to say that no other institution that has ever been established in the State of New York has attracted so much interest outside of the State, or has been the means of causing so great an improvement in the educational purposes and arrangements of other States as the Cornell University. I know of my own knowledge that Harvard University has had its endowment increased, simply that it might still continue to be, not the superior, but the peer of the Cornell University. The vast endowments which have been lately given to Yale College have had their root and source in the same motive. Sir, I do trust that this Convention will not be governed in this matter by such considerations as those put forward by the gentleman from Rensselaer [Mr. M. I. Townsend]. Mr. Cornell has no desire for credit, no desire for renown, by having his name connected with the university. He simply desires the privilege of doing some good, something which will live after him, and bless and fertilize the minds of our young men in all coming time. He does not ask that this institution shall bear his name, and if it should be the desire of this Convention to give it any other, I will guarantee in his behalf (although I am not authorized to do so) that he will consent that it shall have that other name. Only permit the institution to go and do the benificent work that he desires and intends it shall do for the State of New York, and he will be entirely willing to give up the name and all the honor and commemoration which flows from it, because he will still retain the consciousness that his wealth is conferring blessings upon the present generation and upon generations yet unborn. Sir, this university is designed to do what no other institution does in this land. We have many colleges, institutions for the most part that take every man who enters them and put him upon a Procrustean bed which requires him to pursue a certain number of studies in regard to which he has very little election. Now, sir, we know that every young man has a special vocation in life; that there is something in which every man takes more interest than he takes in any other one. The inclination of some men is to music, of others to drawing, of others to painting, of others to mechanic arts, of others to agriculture, of others to law, of others to medicine, of others to the ministry, and these different classes of men require different training and different special preparation in order to enable them to perform the functions that they are to assume with the greatest success and the greatest advantage to the public. The Cornell University proposes to give its children these advantages. It proposes to take the man just as he is, and if he desires to be a mechanic to make him acquainted with the laws of mechanics, or if he wants to be a farmer to teach him all that is necessary to make him a successful and accomplished farmer. It will teach the science of precious stones to the lapidary, and the ultimate structure of iron to the blacksmith. It will reveal the mysteries of architecture to the carpenter and the use of the theodolite to the engineer without asking him to learn one word of Latin or Greek. The Cornell University not only proposes to do this, but it proposes also to add to the amount of human knowledge—to be an investigating institution. It proposes to give us such a body of scientific men as we have never yet had in this State or in this country. If the State authorities desire scientific information in regard to any subject, this institution proposes to have a body of scientific men constantly at the service of the State to investigate the scientific problems that may arise, and to give the most satisfactory solutions of them possible at the time. This is a distinct feature of the Cornell University which ought not to be overlooked in this discussion. If we desire to have such an institution, if we desire to extend the area of human knowledge, then I trust that the means by which the Cornell University may be enabled to give it to us will not in any contingency be al-

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lowed to be taken away from it. I believe that I have now answered all the arguments of the gentleman from Rensselaer [Mr. M. I. Townsend]. He has told us that it is not immoral for the State to make a contract with Mr. Cornell, and then back out of it and withdraw the consideration by which Mr. Cornell was induced to appropriate the munificent sum of $500,000 for this purpose. Now, if that is not immoral, I should like the gentleman to tell us what is immoral. Surely his dictionary must be different from those which are in general use among the people of the State of New York. I trust, sir, that we shall hesitate no longer, but that we shall perform the act which is required at our hands by the unanimous wish, at least, of the farmers of this State, and, I think I may say, by every one who is not interested in other institutions, and who is interested in promoting the highest interests of this State.

Mr. A. LAWRENCE—I desire to say a few words to correct what seems to be some misapprehensions in the minds of some of the gentlemen who have spoken here. In the remarks that I made this morning I spoke of institutions of learning which had self-perpetuating bodies of trustees. The gentleman from Columbia [Mr. Gould] has endeavored to show that this institution is not one of that kind, by showing that when the graduates reach a certain number, the body of the trustees, except those who are *ex officio*, must be selected from these graduates. Now, there is not a gentleman here who is a graduate of a college, or who is acquainted with the graduates of colleges, who does not know that there is an *esprit du corps* pervading them as a body, from the highest professor down to the lowest student, which will make this mode of filling the vacancies in a board of trustees really have the effect to make that body self-perpetuating, as I stated. The same principle which governs the board of trustees will govern those members who are added to it in this way, for every body knows that a board will not take any man of opposite views. There seems to be another misapprehension here. This subject seems to be discussed with the idea that my amendment proposes to take away this fund from the Cornell University. Sir, it proposes no such thing. It proposes simply to put the conditions to be performed by the State and the conditions to be performed by Mr. Cornell on the same footing, to give each guaranties of the same degree of stability, and not to appropriate these funds by an unalterable constitutional provision, and then leave the conditions to be performed by Mr. Cornell so unguarded that, in a contingency that may be very well imagined, his heirs might apply to have this gift refunded on the ground that the institution already had funds enough. The object of my proposition is simply to put the matter so that it will stand fairly and equally on both sides. There is another misapprehension which I desire to have corrected. We have heard a great deal said in commendation of the liberality of Mr. Cornell, in all of which I concur. But this amendment refers simply to what is called the college land scrip fund, which is the first price of the land, and it is not pretended that it is any more, or really as much as the land is worth. The amount is $594,000, and this amendment applies only to that. Now, the Cornell endowment fund amounts, according to Mr. Cornell's estimate, to $2,350,000, of which $1,850,000 are profits derived from that land. That is the fund upon which all these brilliant eulogiums are passed, and nobody proposes to interfere with it. The Cornell University has that in perpetuity, and the question is entirely confined to this fund of $594,000, derived from this land scrip (which was sold for no more than it was worth), over which the State has a right to exercise supervision, and to secure the use of the fund for the purposes to which it was devoted by the act of Congress.

Mr. ALVORD—Do I understand the gentleman to say that that is no more than the scrip was worth?

Mr. A. LAWRENCE—Yes, sir; sixty cents an acre.

Mr. ALVORD—I would like to refer the gentleman to my friend from Chautauqua [Mr. A. F. Allen], who says that he was offered this at fifty cents per acre.

Mr. A. LAWRENCE—I see by the statement of the commissioners of the land office, that a portion of this scrip was sold at eighty-five cents per acre, and all that was sold previous to Mr. Cornell's sale, was sold at an average of sixty-five cents.

Mr. ALVORD—I would inform the gentleman that that sale was immediately upon its receipt from the United States, and that there was no other sale intermediate between that sale and the sale to Mr. Cornell.

Mr. CURTIS—If the gentleman will allow me, I will state that Kentucky sold its share of thirty-three thousand acres at fifty cents an acre. The gentleman will further observe that when he gives $594,000 as the total amount of the college land scrip, that it arises from the fact Mr. Corpell offered to take the whole of the scrip and to allot thirty cents of the profits that he should derive from it to that fund.

Mr. A. LAWRENCE—I do not understand it so; I understand that the sale was made to him upon the express condition that he was to pay thirty cents when he took the scrip, and after realizing from it, was to pay the remaining thirty cents. If you sell a man a piece of land for a thousand dollars, and take five hundred dollars down, and five hundred dollars afterward, I do not understand that last five hundred dollars is a gift from him; but that would be a similar case to this.

Mr. BELL—As a further answer to the observations of the gentleman from Rensselaer [Mr. M. I. Townsend] who exultingly asks, why not put the Vassar Institute, and other similar institutions, into the Constitution, I would say that no other institution in the State is so completely under the control of the State as this Cornell University. I mean by that, that the State has a direct responsibility for every dollar that is realized from this land, and in confirmation of that I will read an extract from the act of Congress.

"The grant of land and land scrip hereby authorized shall be made on the following conditions, to which, as well as to the provisions here-

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in contained, the previous assent of the several States shall be signified by legislative acts.

"1. If any portion of the fund invested as directed by the foregoing section, or any portion of the interest thereof, shall by any action or contingency be diminished or lost, it shall be replaced by the State to which it belongs, so that the capital fund shall remain forever undiminished: and the annual interest shall be regularly applied, without diminution, to the purposes mentioned in the fourth section of this act, except that a sum not exceeding ten per cent upon the amount received by any State under the provisions of this act, may be expended for the purchase of lands for sites or experimental farms whenever authorized by the respective Legislatures of the States.

"2. No portion of said fund, or the interest thereon, shall be applied directly or indirectly, under any pretense whatever, for the purchase, erection, preservation, or repair of any building or buildings.

"3. The State which may claim the benefit of the provisions of this act, shall provide within five years for at least one college, so described in the fourth section of this act," etc.

Now, sir, when the State of New York accepted this donation, it was obliged to comply with these conditions, and obliged, either out of its own treasury, or from the contributions of others, to provide farms, buildings and apparatus for the teaching of the arts mentioned in this act. In addition to this, as I said before, the State has a direct responsibility, and it is bound to see that no portion of this fund is squandered; and whenever any portion of it is squandered, the State is bound to make it up, by taxation or otherwise, from its own treasury. Now, the State has never entered into any such agreement with any other institution. It has not been pledged to enter into any such agreement with any other institution, and I regret that I have not the act of the Legislature of 1863, that I might read just what the State was pledged to do in this case before it was allowed to accept the scrip donated by Congress. I think the relations of the State to this institution differ materially from its relations to any other institution, and, therefore, that we may well depart in this case from the ordinary course of legislation in regard to these other institutions.

Mr. M. I. TOWNSEND—It is evident, sir, that we shall not finish this subject to-day, and as I made a motion by which, against the will of some members of the Convention, we have protracted our morning session, and as some gentlemen may wish to avail themselves of public conveyances to go out of the city before long, I move that we now adjourn.

Mr. FOLGER—The trouble is that gentlemen cannot avail themselves of public conveyances to go out of the city; it is too late.

Mr. CURTIS — The discussion having commenced, I hope it will proceed until the usual hour for the recess.

Mr. M. I. TOWNSEND—I withdraw my motion.

The question was put on the adoption of the amendment of Mr. Folger, and it was declared carried.

The question then recurred upon the substitute of Mr. A. Lawrence, as amended.

Mr. WALES—Would the defeat of this amendment defeat the amendment of the gentleman from Ontario [Mr. Folger]?

Mr. FOLGER—If the gentleman will permit me to state, my amendment was a substitute for that of the gentleman from Schuyler [Mr. A. Lawrence]. I offered my amendment as an amendment to the amendment of the gentleman from Schuyler, and my amendment having been adopted, it takes the place of the amendment of the gentleman from Schuyler, and the question now is, whether it shall be inserted in the original section.

Mr. M. I. TOWNSEND—I move a reconsideration of the vote adopting the amendment of the gentleman from Ontario [Mr. Folger], in order that we may vote understandingly, because I think the effect of the vote just had was not understood.

Mr. RUMSEY—If we refuse to reconsider the vote we have just taken, I understand that the amendment of the gentleman from Ontario [Mr. Folger] will remain as the question before the Convention, and that if we adopt it it will stand as a substitute for the proposition of the gentleman from Schuyler [Mr. A. Lawrence].

Mr. CURTIS—That I understand to be the exact state of the question.

Mr. RUMSEY—Then I hope the Convention will refuse to reconsider the vote we have just taken.

The question was put on the motion of Mr. M. I. Townsend to reconsider, and it was declared lost.

The question then recurred on the proposition of Mr. A. Lawrence as amended by Mr. Folger, and it was declared adopted.

There being no further amendment offered to the first section, the SECRETARY read the second section, as follows:

SEC. 2. All the said educational funds, as they are paid into the treasury, shall be invested by the Comptroller in the stocks of the State of New York and of the United States, or loaned to counties and towns for county and town purposes exclusively and the State shall guarantee said funds against loss.

Mr. ALVORD—I am myself going to remain in the city over the Sabbath, and there are some few gentlemen present who are so situated that they can reach home this evening and be here by ten o'clock on Monday morning. Generally boys at school have at least Saturday afternoon and evening to themselves, and that we may have the same privilege, and for the purpose of moving that we adjourn so that we shall be enabled to pass over until Monday morning at ten o'clock and not be compelled to sit here this evening by waiting for the clock to reach the hour of two, when it will be too late to make a motion to adjourn, I move that the committee do now rise, report progress and ask leave to sit again.

The question was put on the motion of Mr. Alvord, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. PROSSER from the Committee of the

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Whole reported that the committee had had under consideration the report of the Committee on Education and the Funds relating thereto, had made some progress therein, but not having gone through therewith, had directed their Chairman to report that fact to the Convention and ask leave to sit again.

The question was put on the granting of leave, and it was decided in the affirmative.

The PRESIDENT announced the following committee upon the manner and form in which the Constitution as amended and adopted in Convention, shall be submitted to the people:

Messrs. Merritt, Folger, Daly, Hale, Hutchins, A. J. Parker and Chesebro.

Mr. VERPLANCK—I move that this Convention do now adjourn.

The question was put on the motion of Mr. Verplanck, and it was declared carried.

So the Convention adjourned.

MONDAY, January 20, 1868.

The Convention met at 10 A. M., pursuant to adjournment.

Prayer was offered by the Rev. Mr. FARR.

The Journal of Saturday was read and approved.

The Convention resolved itself into Committee of the Whole on the report of the standing Committee on Education, Mr. PROSSER in the chair.

The SECRETARY read the section as follows:

SEC. 2. All the said educational funds, as they are paid into the treasury, shall be invested by the Comptroller in the stocks of the State of New York and of the United States, or loaned to counties and towns for county and town purposes exclusively, and the State shall guarantee said funds against loss.

Mr. ALVORD—I move to strike out in the second section all after the words "United States" in the third line—the remainder of the section. I do not desire to make any lengthy remarks upon this matter, but simply desire to say that this practice of making loans to counties and towns for county and town purposes, is a practice which has obtained in the past history of this State, and in very many instances the money has been absolutely lost, and the State, either by agreement that on the whole it was best to give it to county or town for some purpose claimed to be of general public interest, or in some other way, has lost the money altogether; while in other instances it has been a matter of considerable difficulty for the State to succeed in getting the interest. Then, again, it involves this simple proposition whether or not the access to the funds of the State through the operation of the law for the purpose of performing some act or thing of a *quasi*-public nature on the part of the towns or counties, does not engender a desire in them to incur expenditures which otherwise, if they were called upon to pay for them directly by taxation, economy would forbid them to incur. I believe, sir, that towns and counties are induced in this way to go into expenditures sometimes amounting to extravagance, feeling that they can easily obtain the money from the State, and need never pay any thing but the interest of it for all time to come. I think, therefore, that we had better restrict our towns and counties to paying out only such moneys as they are willing to tax themselves directly for, and not encourage them to run into debt upon the hope that the principal of that debt will never be called for.

Mr. CURTIS—The section now under consideration was introduced with great deliberation by the committee after consultation with the Comptroller of the State and with an honorable member of the Convention [Mr. Church], who had been Comptroller formerly. It was the result of their experience that such a provision as this would be most serviceable. As the matter now stands you are aware that this money is loaned to individuals upon mortgages which are the first lien, but such is the looseness of the present method of making the loan that within the last thirty years, according to the report of the Comptroller, the State has lost some $160,000 in this way. The loss of the principal is made up by the interest, and consequently there is a constant deterioration. Still it was deemed wise that the people of the different portions of the State should have the use of this money under sufficient guaranties, and it was with that view that we inserted this provision, as a safeguard in the making of these loans.

Mr. ALVORD—The difficulty in the past, so far as regards this matter, a difficulty which is avoided by having the section as I proposed to leave it, has been in this wise. So far as regards the United States deposit fund, certain amounts of this money went into the treasuries of the different counties of the State, and they undertook to loan it on real estate in the hands of individuals. The result has been, that through favoritism or otherwise, they have been careless in examining into the titles and into the actual value of the property upon which the loans have been made, so that in many instances the title has failed, and in other instances the value of the property when it has come to be submitted for sale on foreclosure of the mortgage, has been found to be merely nominal. This accounts for a considerable portion of the one hundred and sixty thousand dollars that have been lost. Another thing, they have been in the habit of loaning out the funds of the State, other than the educational fund, to academies and local institutions of learning, and after those loans have been made, the academies and other institutions have come down here to Albany and kept constantly hammering, until they have entirely hammered away the foundation of the loan, and the money has been given to them by the people of the State. Now, sir, these towns and counties if they want any money for any purpose under heaven, their people are able to pay that money, and should be compelled to pay it by taxation within a reasonable time; and they should not be permitted to borrow in that way. When they raise money in that way their debt, in their view, is put off almost indefinitely, and they run into unnecessary expenditure which they would avoid if they had to have taxation follow close upon expenditure. Now we have provided in this section, very correctly I think, so far as the committee is concerned, that for the future these moneys shall only be invested in the

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stocks of the United States or the stocks of the State of New York. This gives us a perfect security, and this is the way in which the funds should be invested; but making these loans, it seems to me, is only encouraging a sort of reckless extravagance which we had far better discourage.

Mr. GRAVES—I would like to inquire of the Chairman of the Committee on Education, what is meant by the last line of this section—"the State shall guarantee said funds against loss." Does that mean that if the towns and counties fail to pay the money, the money is to be taken out of the State treasury to supply the deficiency?

Mr. CURTIS—The money is to be taken out of the general fund, the school moneys to be always intact. That was the intention.

Mr. GRAVES—Then I understand that the treasury in general is to be depleted to make up any loss which may be sustained by any omission on the part of the towns or counties to pay the interest on these loans.

Mr. CURTIS—It is the misfortune of the State that the school fund is a great domain for predatory incursions from the other departments, and it was the design in this provision to keep this most important fund always intact, so it was provided that these losses should be made up by the State generally.

Mr. A. F. ALLEN—I am in favor of the proposition of the gentleman from Onondaga [Mr. Alvord], for this reason. By the report of the Comptroller, we find that he reported $491,765.82 principal with the addition of interest, amounting to $188.256,71. When called upon to know what amount of interest was due upon money loaned and upon the interest on bonds for lands sold, we find by the reply that the interest reported should have been $78,097.27 less, hence by that statement it appears that no one at that time, was in possession of actual knowledge of what the real amount of money belonging to the school fund was. Also we find in that report a class of items amounting to about one thousand in number, in many instances the interest largely exceeding the principal, and in a few cases of loans to institutions and corporations, we find that the interest has accrued to one-half or one-third of the principal. It seems, to say the least, that there has been bad management of this fund; not very creditable to any official officer of the State. I charge this, not upon any one particular administration or officer because it seems to be a system that was inaugurated very many years ago, and perhaps at the time it was inaugurated in our early history there might have been a seeming propriety for permitting these loans, but at this day and condition of our State it seems quite unnecessary to make such loans in the manner that they have been made. I am aware, as the gentleman from Onondaga [Mr. Alvord] has remarked, that many towns come up to the Legislature with the plea that they have borrowed money for some purpose of public benefit or advantage—perhaps to build an academy or some institution of learning—and they say, "You surely will not sell our academy; you are not going to distress us; the State is rich," and thus they get the liability discharged. This fund should be kept secure and good, but this system of finance will never keep it so, but will always, in aggregate of amount, be uncertain to a certain extent under the present management. For that reason I shall support the amendment of the gentleman from Onondaga [Mr. Alvord], and I feel almost inclined to introduce the following resolution, which, although it may not be proper at this time, but as it meets my view of the case I will now read the suggestion:

"The Legislature shall provide for the collection of all moneys belonging to the educational fund loaned to individuals, or for moneys due on bonds for lands sold on which payments of principal and interest are past due."

I do not know that it will be proper for this body to introduce this provision into the Constitution, but it seems to me that a radical change ought to be made in the management of this fund. This school fund should be brought down to a solid basis, so that we might know what we have to rely on from that fund.

The question was put on the motion of Mr. Alvord to strike out, and it was declared carried.

Mr. S. TOWNSEND—I move that in the third line, after the words "State of New York," there shall be inserted "or any cities thereof." It will be perceived by the committee that there is a possibility that with the coming of a better condition of our business affairs, the stocks of the State of New York may assume such a position in the market as would make the investment in them a very unprofitable one, and a possibility still more remote, that the same condition of things might exist with reference to the stocks of the United States. Now, we know, that with reference to the stocks of the cities of the State, great caution has always been exercised in their issue, and I believe that it may be safely asserted that not in a single case of the issue of the stocks of a city in this State, has there been a defalcation. These stocks we hold, too, under our control, they are part of our State system. The stocks of the city of New York present an aggregate value equal to half the value of the stocks of the State, and I think it would be very unwise to limit the investment of these funds to the stocks of the States or the stocks of the United States. the latter stocks over which we have no immediate control, and omit to allow investments to be made in the stocks of our own cities, over which we have a direct control. The fact of the profitableness of investments of the cities of our States that can be obtained about par, I should suppose would have had controlling effect in the minds of the Convention in their determination of this matter.

Mr. ALVORD—I think the opinion of the committee in regard to that matter has been settled by the provision refusing to loan to towns or counties. The stocks of the towns and counties of the State, are just as good, and perhaps a little better, than the stocks of the cities, and this is only a proposition to do by indirection the same thing that we have already decided not to do—facilitating the means by which cities can get hold of money from the State treasury and expend it extravagantly. The cities of our State,

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to-day, are loaded down vastly beyond the means of their people to bear.

Mr. S. TOWNSEND—Let me ask the gentleman, has there ever been a single defalcation in the case of any of our cities?

Mr. ALVORD—I am not talking about defalcations, sir. I trust that the people of the United States of America, if it should become necessary, will pay ninety-nine, aye, a hundred per cent on the dollar of their actual property for all their indebtedness, but this is not the question. I say that our cities to-day are paying three, four, five and six per cent in taxes in consequence of the fact that we have gone recklessly and extravagantly in debt because of the facilities that they have had to procure loans on their stocks and bonds. Now I trust that we are not going to give them additional facilities in the same direction. The city of New York, instead of being in debt half as much as the State, is to day indebted to the full as much as the State is, and there are a very few of the cities in the State which are not indebted to an amount, so far as the interest itself is concerned, of two to five cents on the dollar in the valuation of their property.

Mr. S. TOWNSEND—If the gentleman will allow me to interrupt him for a moment, I will say in reference to the indebtedness of the city of New York that it is some thirty millions of dollars, but that city has some fifteen millions of dollars of her own bonds in her treasury, and beside she has the Central Park, and the Croton water-works, and—

Mr. ALVORD—I take that all into consideration, sir. I stand up here as one of the believers of the fact that where an institution or a State or a city is in debt nominally in the way of stocks and has property available as against that indebtness, the sum total of the indebtedness is the balance. Now if you take the State of New York to-day, you find her with an indebtedness of fifty or fifty-five millions, including her canal debt; but give to the State the credit of that canal property which she owns, and it will sweep out of existence the whole of her indebtedness. That is the test that I apply, and it is for this reason that I say that the city of New York with her boasted fifteen millions in her treasury for the purpose of paying so much of her indebtedness, is absolutely indebted to even a greater extent han the State of New York.

Mr. S. TOWNSEND—That indebtedness is the very stock itself that the gentleman has spoken of.

Mr. ALVORD—I understand the gentleman from Queens [Mr. S. Townsend] perfectly, and I understand the position that I occupy. It is true that in those large cities they have fire-engines, and city halls, and parks, and all such things, and other conveniences that are necessary for the benefit and use of the people in the cities, but they are not property which returns in dollars and cents to pay the interest and principal of their indebtedness as it shall become due. This kind of property cannot be used for that purpose. I say again, sir, that the city of New York is to-day indebted to the full as much as the State, and I trust that we shall not go any further in this direction than in the amendment proposed by myself.

Mr. S. TOWNSEND—I should like the gentleman to reply to the other branch of my argument that such a limitation as he proposes, under the section as it now stands, must necessarily very much decrease the revenues of the fund. By this provision you require investments in certain specified funds. Now, sir, we know the law of demand and supply and the shrewdness of those who deal in money, which is at least as great as those who deal in merchandise, and the moment it is found that these funds must be invested in the stock of the State of New York that necessity will become one of the elements of an increased value of that stock; and if we adhere to this proposition a result will be that we may have to pay one hundred and twenty or one hundred and thirty.

Mr. ALVORD—Let me answer the gentleman right here, before he goes any further. Under a resolution, one of the last that was passed while I was acting in an official capacity as a commissioner of the canal fund, we authorized the auditor to retire a portion of the State indebtedness which was becoming rapidly due within a period of about three or four years.

Mr. S. TOWNSEND—In what year was that?

Mr. ALVORD—In 1866; and he retired a large portion of it at ninety-five cents on the dollar. I say, sir, that the stocks of the State of New York falling due, can be had at par.

Mr. CURTIS—May I ask the gentleman from Onondaga [Mr. Alvord] a question? What was the rate of interest?

Mr. ALVORD—The rate of interest was six per cent. They were stocks that were falling due, at a very near period, and the parties naturally desired to get their money out of them and invest it in others. A man who is engaged in this business of investing money in stocks as a legitimate business, not for speculation, will prefer to take a five per cent stock with twenty years to run, rather than a six or seven per cent stock with only three or four years to run. A five per cent twenty years stock that is perfectly available and good, is worth more than a six or seven per cent stock that has only one or two years to run; and our State stocks are now rapidly falling due, so that in the next ten or twelve years we shall have all of them out of the market, at least to that extent that there will not be any difficulty in this fund being invested in our stocks about at par.

Mr. S. TOWNSEND—I must say that I do not think the gentleman's reply entirely conclusive or judicious with reference to this matter. The facts which he details in regard to the stocks of 1866 may be explained thus. Since the war came upon us and our national government began to issue its stocks, the market has been crowded with other stocks, as good as, or better than our own, and that was the reason why parties holding our securities falling due within a year or two, were willing to accept a price which was even below par, because they could see their advantage in a very large presumptive profit to be had by investment in national securities; but if that condition of things had not existed I apprehend that the stocks of the State of New York could not have been bought below

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par, at the time the gentleman has named. There is another point to which, if the gentleman had directed his attention, I should have cheerfully given him my support; a point that I deem of far more consequence than this, in reference to the profitable and safe investment of these funds. It is that suggested by the gentleman from Sullivan [Mr. Wales] the other day, with reference to the change in the investment of the United States deposit fund. This Convention has exhibited a very praiseworthy spirit in opposition to the increase of State officers, but here we have, in every county of the State, a large number of officers who are engaged in a sort of *ex officio* business whenever they have an opportunity. Now, the provision suggested by the gentleman from Sullivan [Mr. Wales], directing the investment of these funds, as they come in from those mortgages—if not compelling the collection of those mortgages now due—in the stocks of the State of New York or of the United States, would be a very judicious one. We should probably get an equal rate of interest, and we should get rid of the chance among this class of men of "toll," as we choose to call it (though the plainer word is stealing), and thus put the whole matter in so plain a form that he who runs may read.

The question was put on the amendment of Mr. S. Townsend, and it was declared lost.

Mr. WALES—I move to amend by adding the following:

"Provision shall be made for investing in the bonds of the United States government, under the direction of the Treasurer of the State, any part of the principal of the United States deposit fund which shall be paid in to the loan commissioners of the several counties of the State."

Mr. ALVORD—I would suggest to the gentleman from Sullivan [Mr. Wales], with all due deference, that we have already put that provision in the section, in these words: "All the said educational funds, as they are paid into the treasury, shall be invested by the Comptroller." The moment they are paid back to the loan commissioners of the different counties, they are in the treasury of the State, and the commissioners have no right, under this provision of the section, to do any thing else but invest them.

Mr. CURTIS—Unquestionably.

Mr. WALES—I withdraw the amendment.

The SECRETARY read the third section of the report of the Committee on Education, as follows:

SEC 3. The Legislature may provide for the payment into the treasury of money or securities for the general or special endowment of any literary or educational institution in this State; for the investment of the same, and for the payment of the interest upon said investment in accordance with the terms of the endowment as approved by the Legislature.

There being no amendment the SECRETARY read the fourth section, as follows:

SEC. 4. The Legislature at its first session after the adoption of this Constitution shall elect, in joint ballot of the Senate and Assembly, a superintendent of public education, who shall hold his office for four years and until his successor is appointed. He shall have such powers, and perform such duties, and receive such compensation as may be prescribed by law.

The Legislature at the same session shall create a State board of education, to consist of seven members; of which board the superintendent of public education, the Secretary of State and the Comptroller, *ex officio*, shall form a part; and the other four members shall be elected or appointed as shall be provided by law.

The State board of education shall have general supervision of all the institutions of learning in this State, and shall perform such other duties as the Legislature may direct. The term of office and the compensation of the members shall be prescribed by law.

Mr. ALVORD—Without indicating what my action will be in regard to the latter portion of this section, I propose to amend the first paragraph by striking it out and inserting in lieu thereof:

"The office of the superintendent of public instruction is abolished. The powers and duties of such office shall be performed by the Secretary of State; and a separate bureau may be established in his office for that purpose by law."

Previous to and for a long time after the Convention of 1846, the duties now exercised by the superintendent of public instruction, who is undertaken to be constitutionalized here under a slightly different name, were performed, and performed with the approbation of the people of this State, as an adjunct to the office of the Secretary of State. There were other duties performed by the Comptroller, and when we come to that I shall endeavor to take the same course in regard to it, but I hold that, by a fair, unbiased reading of the Constitution of 1846, although it did not by direct terms it did by intendment provide that there shall be created no separate independent State officers other than were named in the Constitution, and that if any work or business or labor which might be particularly applicable to the position of either of these officers, was rendered necessary by the growth of population and wealth of the State, it should be done as this work is done at Washington, by erecting in such departments a separate and distinct bureau and giving it more vitality, force and consequence by placing at the head of that bureau a chief clerk or assistant of the original officer. The tendency of legislation has been to forget this provision of the Constitution of 1846 and to increase the number of public officers, standing independent and irresponsible so far as regards their duties each to the other; and the great trouble and difficulty in the history of our State for the past ten or fifteen years, in regard to these matters, has been this diffusion of responsibility, which has created a lack of interest in the discharge of the duties of the different officers. Your Secretary of State to-day, outside of the fact that he is a member of the canal board and of the commissioners of the land office, is reduced to a simple clerk. The duties of his office can be better performed by a subordinate who gives his entire attention to the mere details of the office, without the necessity of originating a single idea for the purpose of getting over any dilemma that might come before him. The duties of the office of Secretary of State are simply clerical, and there

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is nothing to do but to go according to the regularly laid down rules that have always governed the department. What is the result? Why, the result in the past has been, and I think it will probably be so in the future, that the Secretary of State of New York spends but a very little portion of his time at the Capital. There is no necessity whatever for him to spend much of his time here. He comes here on the occasion of the meeting of the canal board or of the commissioners of the land office, or when some strictly official routine duty compels his attendance; but for the most part he leaves the whole business of the office to his subordinates, and does not educate himself up to the performance even of those duties which he is thus occasionally compelled to do. He does not, and under the circumstances there is no necessity for his doing so, stay here in his office merely to perform these clerical duties; but, when he has official duties to perform that imperatively demand his attendance, he hastily leaves the ordinary business in which he is engaged and comes up and discharges those duties with probably no very great amount of knowledge in regard to them, and when they are hurriedly gone through with he returns again to his own private business and leaves the office to be run by his subordinates. So it is, too, with some other officers of the State. Now, why is it? It is because they have been shorn of their responsibility by this constant increase of independent officers. Although there is no question whatever, but that the Constitution of 1846, and the people in adopting it, meant that there should be direct responsibility on the part of the Comptroller of this State, and that he should see that not one dollar was taken from the State treasury, except upon the warrant and by the sanction of himself as the financial head, yet in the absence of exact terms in the Constitution forbidding it, this superintendent of public instruction has been made a financial officer also, an officer outside the Comptroller, not responsible to him, and drawing directly upon the treasury of the State. And so it has been in the canal department. The Legislature have created an auditor and made him a financial officer of the State, and so divested the Comptroller, to that extent, of the powers and duties that the Constitution contemplated that he should have. Now, sir, I care not whether this concentration of responsibility is called centralization or not. If it is centralization it is certainly centralization in the right direction, and in a way that will be beneficial to the interests of the people of this State, by making the heads of departments responsible to the people, and making all the rest of the officers subordinate and subservient to them. I for one shall hope that before we get through with our labors here, we shall have restored that brightest jewel in the crown of the Secretary of State in the past, his office as superintendent of the education of the people of the State; that we shall have returned to the Comptroller the legitimate duties of the banking and canal departments, as they were in the original Constitution, and that we shall fix the duties of this office, where they ought to be fixed, upon the Secretary of State, and get rid of this confusion and this want of responsibility which now exists, so that when citizens go to the head of a department to investigate any particular matter, they shall not be told: "That is out of my province; it belongs to another officer;" and when they go to that other officer they get the same answer, and are not able to put a finger upon the official who is really responsible. I trust that this superintendent of public instruction will be the Secretary of State of the State of New York. So far as the performance of the duties of the office are concerned, if it should be necessary that there shall be erected in the office of the Secretary of State a separate and distinct bureau, let us give the Legislature the right to do that by law.

Mr. BELL—I am compelled to differ somewhat with the honorable gentleman from Onondaga [Mr. Alvord], who has just spoken. First, in regard to the authority of the Legislature to create the office of public instruction. Whatever is not expressly prohibited is in the hands of the people and the Legislature to do with it as they please. Our Constitution differs very materially from that of the United States. In that, the grants of power must be given by express language, and no powers are given by it unless they are directly granted in the instrument itself; but in this State all the power that is not expressly prohibited by the Constitution may be exercised by the Legislature; so that, unless there is an express and explicit prohibition in the Constitution of the State, any act can be passed, or office created, by the Legislature on that subject. Now, as to the propriety of vesting the duties that have heretofore been performed by the superintendent of public instruction in the Secretary of State, I am not clear, sir, that the duties would be so well and faithfully performed in that way as they would be by an officer created expressly for that particular duty. As is known, the duties of the office of the Secretary of State are more clerical than otherwise, and we do not look for a man in that position who understands our school system particularly; we do not look for those qualifications in the Secretary of State that we would look for in an officer charged directly with the educational interests of the State, and I am of opinion that those interests are of sufficient importance to require the entire time and talent of the best educator in the State, and unless we secure them that attention, I am fearful that our schools and our educational system generally will lack that energy and spirit of progress that are so desirable under a republican government. I am of the opinion that there are duties enough connected with this subject to occupy the entire time and attention of one man to the utmost, and therefore I am in favor of, in some way, either by election by the people or appointment by the Governor or the Legislature, vesting this matter in an officer to be called the superintendent of education, or the superintendent of instruction, as may be deemed best.

Mr. GRAVES—I should regret very much, sir, if this motion to strike out should prevail. I regard the establishment and perpetuation of our common school system as the most important bulwark against the overthrow of the liberties of the

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country, and the most important interest that can be known and recognized by the people. Whoever has looked for the last few years at the proceedings of the present superintendent of public instruction in connection with the acts and doings of the commissioners of the several counties in the State cannot but have observed that the advance of our common school system has far exceeded what has been done before since the organization of our government, and that to-day that system is eliciting the attention and interest not only of teachers in schools and academies, but of every well-wisher of our institutions and form of government. If your attention, sir, has been called for the last few years to the acts of our superintendent of public instruction, you cannot but have learned that great interest has been elicited all over the State, and that the community generally are more than ever engaged in the promotion of common schools, in the building of larger and more commodious school-houses, and are in every way paying more attention to the subject than ever before. All this increased interest and energy in the cause of education has been created, or at least warmed into existence by the zeal and activity manifested by the superintendent of public instruction. Now, sir, I should much regret that this great interest, so important in itself and so important also as the great bulwark of our republican institutions, should be in any way interfered with, and therefore I hope that the motion to strike out will not prevail.

Mr. CURTIS—I was not present, sir, in the committee or in the Convention during the debate on the article prescribing the duties of State officers. I presume had I been present at that time I should probably have heard the gentleman from Onondaga [Mr. Alvord], recommending the abolition of the office of Secretary of State, as he has very plainly set forth that that office is mainly a sinecure. Whether he failed in carrying any such proposition, or whether in his judgment it was not wise to make it, I do not know; but it seems to be his ntention this morning to revenge himself, either for the loss of opportunity or for the loss of victory by moving the abolition of one of the most fundamentally important offices that can be created in this State or in any other. There is no interest so supreme, there is no interest so fundamental, there is no interest so absolutely essential to the permanence and prosperity of the State of New York and of the United States as the interest of education. This has been a common place from the beginning of our history. Every year in this country, every day in every country in the world, shows the greater and the greater importance of this interest. Already in the State of New York, sir, there are about fifteen thousand free schools. The duties devolving upon the department which has the management of these schools, you may readily imagine. Now, if there be any part of the power of the people of the State in the superintendence of their affairs, which they should erect into a distinct department it is certainly an interest so important and fundamental as this; and that is my objection, the palpable, the obvious, the conclusive objection, to the proposition of the gentleman from Onondaga, [Mr. Alvord], that this great interest should be a clerkship in a department which already exists, and exists too, without any special necessity, if I may judge from his remarks. The gentleman in considering this section has forgotten to remark that it is a unit. It is in three paragraphs, or parts, but every part has a strict relation to the other parts. It is proposed that there shall be a superintendent of public education appointed in a certain manner to hold office for a certain time. It is also proposed that this superintendent shall be a member *ex officio*, of the board of education, to consist of seven members. His position in that board is not defined. He is not made the chairman or president of the board. He is not made the secretary. The determination of his duty is left to the wisdom of the Legislature. The section in itself is indicative. It is indicative of the sense of this Convention upon due deliberation, of what should be the general course of management of the educational interests of the State. Every gentleman familiar with the facts will see, therefore, that the section proposes a certain change, not radical, but involving only a change in the general method of the present care of the interests of education. I confess, Mr. Chairman, that it is with great reluctance, as I look upon the thin attendance in the committee this morning, that I find myself brought, by the necessities of the question, and its interests to the immediate consideration of the scope of the section under consideration. I had hoped that the debate might be deferred until the judgment of the committee could be fairly supposed to stand as the judgment of the Convention, which, by reason of so small an attendance, cannot be presumed. I will, however, endeavor to indicate to the gentlemen who are present, the general grounds which have led the committee to report the present section. But it is with some embarrassment that I proceed to address the committee. The section, should it be adopted, virtually supersedes the present Board of Regents of the University, and I am a regent. I am, therefore, forced into the ungracious position of seeming to aim a blow at my most highly respected and honorable colleagues. And yet, Mr. Chairman, I feel very sure that they would be first to defend me from such an aspersion. Whatever the differences of our opinions as to methods may be, our views as to the objects are the same, for the object is simply the best possible method by which the State of New York shall take care of its interests of education. Therefore, Mr. Chairman, there is nothing personal in this discussion. Nothing that I shall say can, by the remotest implication, be held to have a personal application. And since, sir, if this section shall be adopted by the Convention, and afterward approved by the people, I shall be deprived of the highest official honor which has ever been conferred upon me—an honor for which no man was ever more truly grateful to truer friends than I for this to those who gave it to me—I am very sure that I shall be heard for the cause simply, and that every other consideration will now wholly disappear from the discussion. Now, sir, what is the present system of education in this State? It is, as you are aware, a system of common schools, of union schools, of academies and of

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colleges. The two former are intrusted to the care of the superintendent of instruction, the two latter to that of the Board of Regents. The Board of Regents, Mr. Chairman, is, I think, the most ancient institution in the State. The act creating them was drawn, it is supposed, by Alexander Hamilton. The most illustrious names in our history are found upon their records; among them are those of John Schuyler, of George Clinton, of John Jay, of James Kent, of De Witt Clinton, of Washington Irving. These have all been Regents of the University, and altogether there have been of these gentlemen one hundred and five. Their election is by the Legislature, like that of United States Senators; their tenure of office is for life, removable by the Legislature, or at the pleasure of the board, for absence during a year from the meetings of the regents. They serve the State without salary or fees. Their action is noiseless. They make no appearance in the newspapers. So quiet is their action, Mr. Chairman, that at certain times it has been gravely suspected that they had probably ceased to exist at all. Now, sir, it is undeniable, no gentleman will question, that for a long period there has been a feeling upon the part of the people of the State that the regents were a name. They have fallen into disrepute. I will not say, sir, to what this may be attributable. Scholars shrug their shoulders and smile. Intelligent men, familiar with the affairs of the State, ask, "What is the Board of Regents; what are their functions?" There are citizens of the State who have even gone so far as to demand to see the University of the State of New York. There are other citizens who have a vague idea that the University of the State of New York is the institution in the city, which is the university of the city; and so far had this gone, so common and general had this feeling become, that the late poet Halleck, in one of his letters, humorously remarks, "I am becoming as ignorant of books and their authors as a president of a college or a regent of a university." This shows simply the estimation of the state of a body charged officially with the care of what is called the higher education. The institutions devoted to the higher education are academies and colleges. There are in the State, subject to the care of the regents, some two hundred and fifty academies and twenty-three literary and scientific colleges. The Regents are also trustees of the State library. They are also guardians of the State collections; but their relation to the education of the State, which is our practical point, is simply this: they are charged with the power of chartering, visiting and examining the colleges, and reporting upon their condition; of chartering academies, supervising and visiting them, distributing among them the literary funds, and reporting also upon their condition. Now, sir, what is the reality of the service which the Board of Regents in this State perform? And, to begin with the name, what is the university? Why, sir, we have had laid upon our table a communication from the Regents of the University. It appears from that document that because in the city of Oxford, that because in the city of Cambridge, in England, there are certain colleges, buildings and foundations in the same immediate neighborhood within those cities, generally within the same inclosure, of a common sympathy, of a common interest, of a common purpose, of a common faith, all subject to the federal head, called the senate—institutions by which no degree whatever can be conferred, except upon persons belonging to a special Christian denomination; a rule so strenuous and exclusive that within thirty years even the honorary degree of Doctor of Laws was refused to Edward Everett, then American Minister in London, because he did not belong to that special denomination: I say, sir, because these institutions in Oxford and Cambridge, being all blood of the same blood, flesh of the same flesh, energized and organized by the same faith and the same spirit, bound closely together in locality, are justly and properly called the universities of Oxford and of Cambridge, therefore every college in this State, from Niagara to Montauk, every college having a separate denominational foundation, every college having no other possible relation of sympathy or kindred with any other college in the State than the Baptist church in Buffalo has with the Methodist church in Sag Harbor— that therefore, by an unblushing fiction these colleges are to be collectively called the University of the State of New York. Sir, of all practical romances in the State, this is the most prodigious, of all visionary institutions this is the most visionary; nor in all history do I know of any institution with which to compare this except it be that of which Carlyle makes mention in his Sartor Resartus, the celebrated university of Weissnichtwo, which being interpreted means, the university of "I am sure I don't know where." Now, Mr. Chairman, this being the university, what are the relations to it of the Board of Regents? Their first and great function is their visitatorial power. What is that? It is simply a power which practically consists in the reception every year, from these universities, that is from these colleges, each of which, as I said, has a separate foundation, each of which is making its own way, and receiving aid from the State only upon special application and by special law, it is the reception from each of these colleges of a report, which I am very glad to state contains a great deal of the details of educational information. But, sir, for any authority that board has, for any real right of supervision, I think you will look in vain. If any college in this State should decline to send in its annual report to the regents—and you will understand that this visiting power is performed mainly by means of reports made to the regents—if any college should omit to make that report, the result would simply be, I presume, that the regents would remonstrate, possibly, and that would be the end of the matter. Why, sir, during the recess of this Convention, I met a very distinguished professor of the oldest college in this State, which by the theory is subject to the visitation of the Board of Regents, and which, being one of the most important colleges in the State, ought to be subject to their visitation. He said to me "What do you propose to do in the Constitutional Convention about the Board of Regents?" I said "It is impossible to say what we shall do, but we shall endeavor to do the wisest thing for the

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interests of education in the State." "Well," said he, "You do not mean to abolish the board?" I said "That is for the wisdom of the State to determine." "But," said he, "What shall we do without the Board of Regents?" I replied, "What do you do with the Board of Regents now." Well, sir, the gentleman smiled, knowing that I was myself a regent; and I continued: "Professor, if I take your arm now and go up to Columbia College and knock at the door and ask to be admitted, what will you do?" He answered: "I will beg you to come in, and will show you every thing that you ask to see." "Yes," I said again, "but Professor, if I knock at the door, and claim, as a Regent of the University of the State, under the authority of law, to enter and inspect this college, what will you do?" He said, simply and truly: "I shall deny your authority." "Why, then," said I, "are you anxious to have the Board of Regents continued?" "Simply," said he, "because I do not know what will follow, and King Log is always preferable to King Stork." I mention this anecdote, Mr. Chairman, as an illustration of the general feeling about the Board of Regents, not alone by the people of the State, but of a high officer of one of its chief colleges. If, sir —and I presume I speak to the experience of every gentleman familiar with the fact—if the Board of Regents should go into any college of this State whatever, and assert any kind of authority, in the name of the State, the Board of Regents would be simply laughed at, and shown the door. I am not saying that it is desirable that the State should regulate the colleges, but I ask, is there, in such a relation as this to the higher institutions of learning, any reason for the existence of a separate board? But you will say, perhaps, sir, that if the visitatorial power amounts to so little as this, there is still the power of the charter, and that by having the authority to charter colleges, the board necessarily have them under control. This might be so if it were an exclusive power, but the power of chartering colleges is shared by the Legislature. The result is, that of the twenty-three literary and scientific colleges which I have mentioned, five only are chartered by the regents, seventeen are chartered by the Legislature, and one, which is Columbia College, has a more ancient charter than the Constitution of the State itself. Now, the regents may prescribe what they will. They may, with the best intentions in the world and certainly I am the very last man to question their intentions or their individual ability, or their individual worth—they may with the best intentions in the world prescribe the highest possible standard for the collegiate education of the State; they may, if they choose, provide that there shall be no charter issued to any college which cannot show a clear unincumbered property of a million of dollars. What is the result? The Legislature the next day will charter any college which can show an unincumbered property of a thousand dollars for all that the regents can do, and what is the necessary conclusion from this? Why, sir, the necessary conclusion is this: that the Legislature of the State, holding this real power in their hands, look upon this institution, this Board of Regents, as an extremely ancient and venerable body, not costing the State very much money, and upon the whole not worth rooting out of the corner of the Capitol in which it is to be found. Here we perceive the views which the Legislature of the State also probably entertains of the scope and value of this institution; and, observe, sir, that when there is a real institution in this State, not when half a dozen gentleman get together in a village and agree to subscribe a thousand dollars for a university, but when a truly great institution is about rising, fully armed like Minerva to begin its great career—I do not care what the institution may be, where situated, what its name—what does it do? Why, sir, it passes the venerable body of regents by on its way to the Legislature to obtain its charter; it passes that venerable body by because it feels as earnestly devoted to an earnest purpose, that this venerable body is but a shadow and a name. Now, is this a relation, sir, viewed from the ground of the charter, is this a relation of the State to education for which it is worth while to maintain a separate and distinct organized body? Sir, this is the substance of the actual relation of the Board of Regents, to what is facetiously called the university. In the first place, although a name is of small importance except in a matter of names and shadows, there is no university in the proper sense; there is no university even in the sense contemplated, and undoubtedly sincerely contemplated by the regents in their report. In the next place the visitatorial power is purely ceremonial. The charter which they grant is a charter not granted by their exclusive authority, but by a power shared by the Legislature, and which not being exclusive, practically amounts, in the interest of education, to no authority whatever. The second relation of the Board of Regents to the education of the State is the care of the academies. They are also vested with the authority to charter academies, and visit and inspect them, to distribute among them the literary fund, and to report upon their condition to the Legislature. By a decree of the regents the literary fund is proportioned among these academies at so much for the number of students in all the academies who have pursued a certain course of study for a certain length of time. For instance, you will find by the last report laid upon our table during the summer, that there were forty thousand dollars distributed from the literary fund and other sources during the year 1866, and the number of scholars who were to be benefited by the distribution was something more than thirteen thousand, giving a little more than three dollars to each scholar in every academy where this proper course of instruction had been pursued. Now, the exact performance of a duty like this, which is simply clerical, requires, of course, great care and industry on the part of those charged with it. It is with the highest pleasure that I bear my testimony to the fact that these qualities are never wanting to the secretary of the Board of Regents —a gentleman curiously familiar with all the interests of academic education in the State, on who, substantially, the whole labor of the Board of Regents devolves. We have thus reached, sir, stripping aside the flowing robes and the embarrassing clouds—we have reached the substance

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of the matter; we have found the actual function which the Board of Regents perform in the economy of education in this State. They distribute to the academies a certain amount of money known as the literary fund, upon certain conditions which they themselves prescribe. This clerical duty, sir, is all performed in the office of the regents by the most capable secretary and his most capable assistants. The secretary and his assistants are substantially the Board of Regents of the University of the State of New York. Now, is it desirable that for such a duty we should maintain longer the confusion of a separate board, when, as I think, there is no essential service gained for the cause of education? We are told, that there is no hostility between the board of education and the department of public instruction. I trust so, sir; I certainly hope none such exists. The gentlemen of the Board of Regents, in their report, expressly disclaim the existence of any such hostility. I, as a regent, am eager and forward to bear my testimony to the fact that there is no reason in such hostility, their interests being in their nature essentially the same, being the interests of education, and for this very reason it is that they should be placed all of them under the superintendence of one board. The Board of Regents is also undoubtedly an inexpensive department. It is a service done for the State at very little cost, but however small the expense may be as now administered, it would necessarily become still smaller even if such a proposition as that of my friend from Oncndaga [Mr. Alvord] should be adopted, and this Board of Regents and their functions should be made a clerical or subordinate bureau, in a great department of public education in the State. Why, sir, in the seventy-seventh report, the report for 1864 of the Board of Regents, they themselves speak of the want of thoroughness and exactness in the academic education in this State, and they propose certain methods to the Legislature by which they think the thoroughness and exactness might be attained. At that time we had in this country a most intelligent and competent observer of our system of education—the Rev. James Fraser, a commissioner sent out by the British government for the purpose of examining the common school system of the United States. He made a thorough investigation in the States of New England, New York, Ohio and Illinois, and upon his return he laid before Parliament a blue book which I do not hesitate to say, Mr. Chairman, is the most admirable view of the practical workings of the public school system of the United States which is to be found. He very freely bears his testimony to the worth of the system of education in this State; and what is that testimony? Quoting the very passage of which I speak, that greater exactness and thoroughness are desirable in the academic education, he says: It is absolutely, in my judgment, necessary, if they would secure, as the Regents desire, this greater thoroughness and exactness, that they should bring the whole system into one organic form, that instead of tolerating two systems in the State there should be one system; that as the interest of education in the State of New York, whether in the highest possible range of a university, down to the alphabet learned by a primary scholar, is essentially the same; so all those interests should be unified and placed in the charge of one department. And, sir, that is a view in which I am sure the Rev. Mr. Fraser has the hearty concurrence of all persons in this country who have maturely considered the subject. But, sir, I proceed: If the duty of the Board of Regents is not such as in itself to demand the existence of a separate board, has it exercised such a moral influence upon the education of the State as to justify its longer continuance? If we grant that it has no especial practical power or authority, that the laws of the State in relation to it, and its original law, are so obscure that Columbia College may fold its hands and disdainfully refuse to comply, and so far as appears without any remedy; is there any thing in its moral relations to the great interests of education in the State which calls aloud for its continuance? I spoke on Saturday morning of the unpleasant fact that the State, first in population, first in resources, first in wealth, of all the States of this Union, is yet not the State whose standard of education is the highest. I make no complaint, I state facts. It is surpassed at the east and at the west; and yet those eastern and those western glories are often justly ours. There are fifteen hundred young men every year sent by the State of New York to college. Of those fifteen hundred more than one-third go out of the State. One of the chief institutions in New England, during the student life of a friend of my own, had, I think, more than two-thirds of its students from the State of New York—meanwhile the fostering, elevating moral influence of the Board of Regents of the University, having charge of the high interests of education, continues. Yale College, Harvard College, the University of Michigan—what are they? They are the three great institutions of education in this country. Yale College is distinguished for its scientific rank; and yet four of the men who filled the scientific chairs in Yale and helped to give it that superior rank are New Yorkers—they are sons who went from this State. I remind you, sir, that the Board of Regents is eighty years old. For eighty years it has been fostering the higher education of New York; and now in a State which, at the time of the creation of the Board of Regents was a wild, silent forest, an institution is arising of the broadest and most generous scope, whose chairs are filled by the most able, yes, even by the most famous professors; an institution so thronged in its various halls that Harvard College, the oldest in the country, gladly, by the mouth of one of its most distinguished sons, salutes that young university as the chief and truest university in the land; and the crowds which go to that university, greater than those which attend any other in the land, recall the golden days of Bologna and Padua, of Salerno and Salamanca; yet this great institution which springs from the greatness of the west, which is inspired with all the young life of the west, owes a very large part of its influence and position to the fact that at its head, at the time when it began its great career, was a

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son of New York, assisted by another son of New York, its professor of history. And I say with pride and pleasure in this Convention that that professor of history, that accomplished scholar, that wise young statesman, that successful administrator, has at last been reclaimed by this State to preside over the true university which that State is helping to create, known as the Cornell University. There is not yet, I say, Mr. President, a single college in the State of New York which holds an equal rank with some of the colleges beyond its borders. No gentleman will misunderstand me; I am not so foolish after what I have already said of the perfect paralysis of the powers of the regents in regard to colleges, of course I am not so foolish as to make the Board of Regents responsible for the condition of these colleges; but this I have a right to say—having shown the real power of the board to be a perfectly unsubstantial thing, I look for a moral influence upon the higher education, and I do not find it. I appeal to any scholar in this State, I appeal to any teacher in this State, I appeal to any man familiar with the course of education in this State, to tell me whether the Board of Regents of the University has been at any time, anywhere, in this State, or is at this time, anywhere felt as a great energizing, elevating, and inspiring force in the higher education. If it can be proved to be otherwise, I will at once so far withdraw what I have said. Why, sir, the academies which are in the special charge of the Board of Regents in this State bear their testimony involuntarily to the condition of collegiate education in the State. There are teachers who fit a certain number of boys for college every year. Some of the best of these teachers tell me that they have more pride over the one boy who is admitted at the Michigan University, at Harvard, or Yale, than of the ten, twelve, or fifteen boys who are admitted at any New York college whatever. And why, sir? Because the boy's success is the teacher's glory. A diligent and devoted teacher in Chautauqua, in the remotest part of this State, a faithful servant teaching young men, knows that when a boy he has fitted is received at Harvard, at Yale, or Michigan, without qualifications, it shows that the man who prepared the boy, the solitary teacher in the remote corner of New York, has measured himself with Exeter, with Williston, with Andover, or with any of the great academies in the land. So it is in this manner, also, that the State of New York is made tributary to the collegiate glory of other States. Now, this condition of the higher education in the State of New York is not certainly to be attributed to any one cause. It is to be referred to several causes; but when there is a board solemnly appointed whose duty it is to take charge of this higher education, and at the end of eighty years with all the resources and the opportunities of the State, this is the truthful story that must be told—I do not make that board individually and solely responsible, but they must surely bear their share of the resposibility, and they must justify their existence by their greater service in other respects. Now, then, sir, what is it that the committee propose? In the article laid before you you will see that, without touching the academy or general school interest of the State, as it at present exists, the committee propose that there shall be a board of education, consisting of seven members, of which board the superintendent of public education—and the word "education" was chosen as the proper word, the word "instruction" having reference to the art of conveying information and the word "education" covering the whole subject—"the Secretary of State, and the Comptroller, *ex officio*, shall form a part, and the other four members shall be elected or appointed as shall be provided by law." It will be seen, therefore, that if there had been any hostility, which the regents expressly disclaim, between the Board of Regents and the department of public instruction as now organized, this is not a victory of one over the other. This, upon a careful consideration of the whole matter, seemed to the committee to be a remedy of the defects of the present system as they exist under the Board of Regents and as they exist under the department of public instruction. The proposition is to bring the whole subject of State education into one department or board, by which the work now performed by the regents may be discharged in one bureau. I find—and it is since the conclusion of the labors of the committee, since our report was submitted to the Convention—I find that substantially the suggestion which is made in this article was made by Mr. Wetmore, who is, I think, the same who is now, and I think was then a Regent of the University—to the Legislature in 1835, he being then chairman of the literature committee. Mr. Wetmore's proposition was that there should be a department of public instruction, the superintendent of which should be appointed triennially by the Governor and the Legislature, the superintendent to be *ex officio* chairman or chancellor of the Board of Regents, and to be vested with the power of visiting and inspecting the colleges and academies in the State. That, thirty-two years ago, was the feeling of any man who thought deeply upon the educational interests of the State, and I venture to say that now there is no man who does not start with the false assumption, and who does not stop with the theory that there is a hostility between the academy and the common school, and that there must be a hostility between the academy and the common schools—who does not take the view which Mr. Wetmore took at that time, and which is taken by the committee in their report. You may ask the obvious question: Why not then make the regents this board of education? The reply is plain. In the first place, the tenure of the board, the duration of their trust, is not agreeable to the purpose contemplated by the committee in the article which they have reported. The Board of Regents are now elected for life; and, in the second place, being so elected and being elected with reference to certain duties, of course it would not be fair that a body appointed for a specific duty under one set of circumstances should be continued for the discharge of very different and additional duties both in their scope and range. I think also we shall hear it stated in this debate that this is a proposition to mix up politics with education. I think at least we shall all agree it

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would be a very good thing if a little more education were mixed up with politics in the previous history of the politics of this country and the State, although that is not precisely the scope of the objection urged. It seems to be supposed by my friend from Onondaga [Mr. Alvord] that if you give the board of education the duties that are now discharged by the department of public instruction it will bring political influences into education. But at the period to which he refers, when the Secretary of State was *ex officio* superintendent of public instruction, how was it? Are we to suppose that Mr. Azariah C. Flagg or that Mr. John A. Dix were any less politicians than any person who might possibly be elected to the office of superintendent of public education? Is it possible in a government like ours to keep the interests of education out of politics? If my friend and associate in the committee, Mr. Larremore of New York, who is not here and who is president of the board of education of the city of New York, if he were here at this moment he would justify me in saying that the one great interest in which the people of that city have shown themselves wise is the interest of education. Despite the various representations which gentlemen may see in the *Tribune* from time to time, the one interest in the city of New York—despite the unfortunate political character, and the unfortunate personal character of many of the population, the one interest on which the people show themselves wisest is the interest of education. I do not care how ignorant a man may be; I do not care what the condition of his life may be, at this time, and in this country, there is one thing that he knows, if he knows nothing else, and that is the value of education; there is one thing that he resolves for his child, even if he cannot give him the value of a mill, and that is that that child shall be educated, even though he has no idea of the value of education but as a stepping stone to power, influence and place. It is folly to say that in creating a board of education you have mixed politics with the cause of education. If you will have your Secretary of State the superintendent, he is still a political officer. If he is swerved politically in the management of any of his public duties, or influenced by any partisan or political feeling, he will undoubtedly be so influenced in the direction of education, as much as in any other; but so far as the general question is concerned, so far as the general subject of mixing politics with education is concerned, it is here precisely one of those risks that every State may take, that a free State must take, and that a free State may wisely take. I can see no force in the objection that this is bringing politics into education. Mr. Chairman, it is with great reluctance, it is with great pain, that I have seemed to speak so strongly of an institution of the State with which I am officially connected. My deep, my profound interest in this matter, the growing conviction that I have from day to day, that not only the prosperity but the permanence of this country depends upon the steady improvements and diffusion of education, has led me to make the remarks which I have submitted. I believe it is the duty of this Convention, having, I will say, more gravely, at greater length, with more calmness, considered this whole subject than it is to be supposed the Legislature at any session, in its hurry, might be supposed to devote to it—I say it is the duty of this Convention, as a body of honest citizens who bear in their hearts the highest welfare of the State, to assist the Legislature by such general suggestions as they have wisely matured. And that was the consideration which concluded the committee in presenting this article. If I am asked, why not leave the whole subject to the Legislature? why "undertake," as the gentleman from Onondaga [Mr. Alvord] says, to constitutionalize this subject?—I answer, why "undertake" to constitutionalize any subject whatever? What is the object of constitutionalizing any subject? What is the object of placing any thing deep and firm in the fundamental law? To secure great principles of principle and administration, and fix them fast. That is the very object for which we are assembled here, and therefore it is that if any gentleman asks, why not leave this whole matter to the Legislature, he will reflect that it is, of all subjects, precisely the matter in which the Legislature might wisely take and wisely rest upon the advice of the Constitutional Convention. Sir, in regard to the ancient and venerable body with which I have the honor to be associated, at most, if this section shall be adopted, at most and at worst, my fate is theirs. If they go I go. If the ship is wrecked, I too am left weltering in the water. I honor with every man what is justly ancient. No man more than I perceives its value. If I could consult my personal respect and feeling for my colleagues; if I could for a moment consider my own personal pride; if I could yield to the charm that inheres in long tradition, I should as heartily oppose as I now sincerely approve and commend to the most earnest consideration of the committee the section which the Committee on Education has reported.

Mr. M. I. TOWNSEND—I do not wish to participate, at the present time at all events, in the discussion of the question whether the interests of education should be submitted to two boards, one having the care of colleges and academies and the other of common schools. But I wish to confine the few remarks that I have to make at the present time to the amendment proposed by the gentleman from Onondaga [Mr. Alvord], which is to confide the interests of education in this State to the desk of a clerk in a state office. For myself I cannot assent to any such proposition. I believe that the interests of education in the State of New York are great enough to employ the whole mind of the greatest men that can be found in the State. I have another objection to the proposition of the gentleman from Onondaga [Mr. Alvord]. He proposes to allow an officer of the State elected by the people of the State for a great variety of purposes, among which shall be his political standing of necessity, and to discharge a great variety of duties, by his sole individual fiat to select a clerk sitting at a desk, and to have the entire charge of the educational interests of the State. A proposition of that kind will belittle the interests of education and belittle the dignity that such an office should

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mold in the Empire State. It is for these two reasons that I am opposed entirely to the proposition.

Mr. ALVORD—I do not propose at the present time, with the small number of delegates who are now in attendance at this Convention, for I believe that this matter will have to be very largely gone over again—to enter into any extended remarks in answer to either of the gentlemen who have preceded me. But I will say, in the first place, in answer to some of the remarks made by the gentleman from Richmond [Mr. Curtis] who has spoken in rather a humorous strain in reference to the position that I occupy. The difficulty lies here, that the Legislature have gone to work since 1846, and filched and robbed the Secretary of State of the functions of his office, and have transferred them to this so-called superintendent of public instruction. But I propose to restore to him the goods that belonged to him before the Legislature thus robbed him of them, and make his office, as it should be, an office of dignity and responsibilty in the State. I had no feeling or desire, nor any intention at any time to abolish the office of Secretary of State; neither should I object to abolishing the office of Secretary of State, if its duties are to be still merely clerical; but I desire to abolish by the enactment of the Constitution itself the office of superintendent of public instruction, and restore the duties and the responsibilities where they originally belong, to the Secretary of State of the State of New York. Another thing, I charge here, without fear of the contradiction, and I speak of what I know, that the office of superintendent of public instruction in this State, and the office of the superintendent of the banking department in this State, and the office of the superintendent of the insurance department in this State, were created for nothing else under Heaven except political motives, and to give a larger area to political aspirants for office. I hold that there is no doubt in the past history of the State in regard to this matter, and that we here, sitting as a constitutional body, determining the organic law of the State, should look to it and see to it that by no possibility in the future should there be this great error committed from this desire and anxiety upon the part of political parties, each and every one of them, as they come into power in the State, to enlarge the area of office to be given forth to the various political adherents of their party, whether it should be for the purpose of rewarding men, or whether done for the purpose of strengthening the party which was in possession at the time. I ask gentlemen to reflect a moment in regard to this question of education (although I do not desire to go largely into it), and tell me where has come the great incentive to improvement in this regard. Has it ever proceeded—does it proceed even to-day—from the superintendent of public instruction? Has it proceeded from the bureaus of the officers who have had it under their control? No, sir; they have come up from the people themselves, from the people in their primary capacity, who have urged forward from time to time the slow movements of the body of men here at Albany in the direction of still further and greater and higher improvement in the education of the people. And that will bear upon the Legislature in succeeding years as it has in the past. It should be left to the Legislature of this State to have in their hands the means to so mold and arrange the matter of public instruction as, from time to time, it should become necessary, and as the exigencies of education and the people themselves shall demand and desire at the hands of the Legislature. I ask gentlemen to reflect for a single moment in regard to the past history of this State in connection with this matter. Was there, sir, ever in the past any lack of ability in the exercise of the power consequent upon the duties which devolved upon the Secretary of State under the existing laws to carry out the ideas in regard to education? The very first question asked by the people of this State, as they came into the Convention for the purpose of nominating candidates for the office of Secretary of State, was, what are the qualifications of this man to become the great head of the educational interests of the people of this State? It is true, sir, that parties look to the politics of individuals as they nominate them for office; but, sir, I point with pride to the fact that, irrespective of party, before the Secretary of the State of New York was deprived of these great and high duties as superintendent of public instruction, there never was a time when he was not nominated by his party, and elected by the people of the State to the high and commanding position he occupied as an educated and enlightened man upon this subject; and I want to return to those days when, in the operations of our educational system, we can again look as a prerequisite for a person to become Secretary of State, that he shall possess the learning and intelligence and public spirit necessary for an oversight of our educational interests. I undertake to say, sir, that the Secretary of the State of New York, standing as the head in this great position, with the clerical force in his office to perform mere clerical duties, would have an abundance of time an abundance of opportunity to perform the duty to the fullest extent that you can get out of a superintendent of public instruction. Sir, as it is now, the Board of Regents of the State of New York are composed of certain gentlemen who are elected by the Legislature of the State from time to time, and of certain *ex officio* members, who are State officers. The Secretary of State is an *ex officio* member to-day of the Board of Regents of the University. We propose to make him one here. The superintendent of public instruction is also an *ex officio* member of that board, and we propose to make him one here, and the only man who has been added to that board, so far as it regards *ex officio* members is concerned, is the Comptroller of the State. Now, sir, I, for one believe, and always have believed, that the division of responsibility and of duty in the matter of education in this State, was an unwise division, that it always should devolve upon one board, and that it should have one distinct head. I am, and always have been, in the Legislature and elsewhere, in favor of giving to the present Board of Regents, as they are constituted, so far as it regards the workings of this system as advisers and counselors to the

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head of the educational interests, the Secretary of State, the power over all institutions, from the lowest and humblest school, up to the highest university within the limits of the State. I do not believe myself, however, in putting that in the Constitution, but I would leave that to the people who have from time to time educated themselves. I desire to leave to the educator of the people, the people themselves, the power from time to time, as they shall be called upon, to exercise it, so to change the manner in which our educational system shall be controlled or carried on, as, in their judgment they shall deem proper, and not to introduce into this Constitution, a method that we cannot depart from, no matter what the exigencies may be, for twenty years to come. I hope and trust, therefore, that so far as this matter is concerned (and I was going to make that motion after the present motion shall be decided), we shall change the first portion of this section, and then strike out the balance. Then the Legislature of the State of New York, so far as this Convention was concerned, seeing that we are against the idea of increasing the public offices, and desire a concentration of the powers and duties pertaining to these branches, under the control of the existing State offices, in order that they may be more economically administered, and better for the interests of the State, will, I think, accept the idea, and our educational interests will be managed as they were in years past. And I can reiterate here that these officers I have named were created in violation of the spirit of the Constitution of 1846, merely to create places for individuals, and for the increase of the power of the party then in existence.

Mr. M. I. TOWNSEND—I am obliged to the gentleman from Onondaga [Mr. Alvord] for his attempt to illustrate the difference between the mode in which business will be done by the head of a department who has simply charge of one branch of the business, though of great importance, and one in which the business will be done where the head of the department has charge of multifarious duties, and the business is left to a mere clerk having a bureau in his office. I have been in a situation to feel the result of the change of system in this State produced by the creation of the bureau of insurance, that the gentleman takes occasion to bring in here. He says that the bureau of insurance was created for the purpose of making an office for a political favorite, and for the purpose of augmenting the power of the party then having control of the State. Now, sir, in the year of 1854, when the bureau of insurance was intrusted to the old slow-going system under the control of a State officer at the head of one of the departments, we had a fire in my city that destroyed property to the value of about four hundred thousand dollars. Our citizens were insured in New York State insurance companies that had been organized directly by statutes of the State, and whose stocks and organization might have been inquired into by the State officer at the head of the department; but though insured to the extent of about three hundred thousand dollars, our citizens never collected twenty thousand dollars of insurance. The result was an almost total loss. This insurance department was afterward created, if you please, for the purpose of promoting political power, and to make an office for a political favorite. In 1862, on the tenth day of May, we had another fire, and that fire destroyed about two millions of property, on which we had insurance to $1,350,000, and within two months after the occurrence of the fire there had been collected, mainly from New York insurance companies, and paid into the hands of the persons who had sustained the loss thirteen hundred and fifty thousand dollars, and not five thousand dollars of all the insurance that was upon the property destroyed was lost, and not one thousand dollars lost from the weakness of the insurance companies. Now, sir, if a party in creating a department has put a person holding sentiments in consonance with the views of that party into the office, and yet at the same time has wrought an immense public benefit, I would continue the office rather than strike it out of existence. I know of no offices but have been filled by men holding the sentiment of some party. A man who does not have any political sentiments is not fit for any office, whether it be that of superintendent of public instruction or superintendent of the banking or insurance departments. I do not undertake on this occasion to speak of the banking department in this State any further than this, that that gentleman will be a very bold gentleman who will say, at this day, that the banking department in this State has not been a benefit to the State. These departments must necessarily be filled by persons who hold some political sentiments. It is no disparagement to the character of men that they do hold political sentiments; but if the departments are useful to the State the State must have them. We cannot dispense with them.

Mr. ALVORD—I have not undertaken to say that an office in any department of the government, I care not what it is, shall not be held by politicians—that is, men in the enlarged sense of the term, whose feelings on the subject of politics are in unison with the party placing them in power. What I complained of was the creation of offices for the purpose of placing partisans in office, and for the purpose of increasing political power. In answer to the other point, I say that in so far forth as the matter of insurance is concerned, the very fact that he has suggested in reference to the fire in 1855 shows the necessity of the operation of laws in the State giving inquisitional power on the part of the officers having charge of the insurance department, and which power might still as well have been devolved upon the Comptroller as upon the superintendent of the insurance department. So in regard to the banking department. When your banking department was created, laws were enacted along side of it which gave inquisitorial powers to that department, which might as well have been given to the Comptroller. So in regard to education. The progress that has been made during the last ten or twelve years is not in the creation of bureaus, but in the enactment of laws which those bureaus have carried out in good faith but which could have been as well carried out by the Secretary of State or Comptroller. The idea that the produc-

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tion of these different and separate departments is the occasion of this reform and benefit is not a tenable one. It is simply the fact that in the progress of events in this country, the Legislature has seen fit to change the laws upon this subject and to give powers and duties to the heads of these different departments, different from what were possessed by the State officers when these bureaus were under their immediate control; and I do not think any man can reasonably doubt that, when we shall put these same duties under the control of the existing State officers, and we reduce the number of independent bureaus, the duties will be just as well performed as they are performed now. It is not because of the creation of these bureaus for the benefit of a party and for the persons who obtained positions under them, but it is because the laws have been so changed as to give the heads of those bureaus the rights and powers to enforce the laws and make the departments efficient, which powers were not possessed by State officers in the past.

Mr. M. I. TOWNSEND—In regard to the matter of insurance, my friend [Mr. Alvord] will allow me to say that having through my clients and neighbors suffered immensely from the miserable attention which the public officers paid to the organization of insurance companies, previous to the establishment of the present department, that the laws then gave abundant power to the State officer to send down visitors to see whether the stocks of these insurance companies and their securities were or were not valuable. That power given to them was not executed, and yet the companies were got up and organized and suffered to exist and carry on their operations when the slightest examination — an examination which the laws, as they then existed, authorized to be made through clerks and agents—would have shown that these organizations were utterly unprepared to comply with the provisions of the law that gave them their charter to carry on business.

The CHAIRMAN announced the pending motion to be on the motion of Mr. Alvord to strike out the first paragraph in the section.

Mr. S. TOWNSEND—In the matter immediately at issue between the gentleman from Onondaga [Mr. Alvord], and the gentleman from Rensselaer [Mr. M. I. Townsend], as to the benefits claimed to have arisen by having special officers to attend to different departments, I think the gentleman from Rensselaer [Mr. M. I. Townsend], is clearly wrong. I claim that the excellence of our banking system, the benefits of which have culminated in the success that has attended us, and which system has been copied both in England and by the United States government, is not due to having a special organization for the system. It arose under the operation of the laws of this State, scarcely changed since 1842, and constitutionalized in 1846, and while these laws were cared for and put into execution and supervised by the Comptroller of the State. I agree with the gentleman from Onondaga [Mr. Alvord], that the services of the superintendent of the banking and insurance departments, although they are very slightly connected with this subject, could be safely dispensed with and devolved upon the Comptroller. I have heard no exception taken to the administration of the insurance department by the Comptroller, except the one which has been referred to by the gentleman from Rensselaer [Mr. M. I. Townsend]. I think that if he had looked into the losses at the fires which he spoke of, and which were compensated for by but a very small proportion of the amount insured, he would find that the fire occurred in one of the disastrous years. There is something mysterious in this matter of fires.

Mr. M. I. TOWNSEND—If my friend will allow me to say, I will state that by the laws of 1849, insurance companies were allowed to be chartered under the general law. When they got capital of a character provided for by law, that was satisfactory to the Comptroller, they might go into operation. But under that law a set of insurance companies were suffered to grow up that were utterly without foundation; they had a capital nominally representing $500,000, but which was made up largely of the notes of those who had affected insurance; so that the great bulk of the property which they had was not worth one cent, and the loss which the State sustained, was sustained simply because the Comptroller of the State had too much business to do to pay any attention to it whatever.

Mr. S. TOWNSEND—The explanation of the gentleman from Rensselaer [Mr. M. I. Townsend] rather goes to confirm the idea that the losses sustained were in consequence of the existing laws not being fully enforced, rather than from the fact that a special officer had not been appointed. In my experience I must say that I have never found the head of the finance department of the State occupied and employed for any continuous time, in the discharge of his duties. Much of the time in which he is actively employed is occupied in making out reports; but I have never found that he was so much occupied as to make it necessary that a special officer should have charge of the banking department. It was while the Comptroller had charge of the banking department, that it rose to that pre-eminence which distinguishes it in this State. I do not know whether the case referred to by the gentleman from Rensselaer [Mr. M. I. Townsend] of the loss by fire in the city of Troy is one that is attributable to any change or not, for I have not examined the data which would throw light upon that point. But I was remarking that there is a mysterious variation in the amount of fires in different years. It will be found in the returns published, that the losses by fire in this country ranged from fifteen millions a year, and sometimes as low as ten millions a year, to near forty millions a year. And this question has been asked me abroad. Whether the causes are atmospheric, or whether it is the fluctuating immorality of our people which induces this, of course it is impossible to say. I, take it that the causes stated by the gentleman would be found in the range of the circumstances I have suggested. As to the duties of the superintendent of public instruction, there has been one gentleman who once filled the office of Secretary of State, whose name has not been mentioned of late, but who pre-eminently

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carried on the system in a manner that was creditable to himself, and valuable to the interests of the State. I allude to John C. Spencer. There is no man at all familiar with the career of that gentleman but knows of the admirable arrangement of our school system under his management. His instructions were clear, his decisions uniform, and the results successful. To be sure, he managed the system when there were only seven or eight thousand school districts, while now there are eleven or twelve thousand; but that increase is not sufficient, I think, to authorize a change of the duties from the office of Secretary of State, and as the gentleman from Onondaga [Mr. Alvord] has stated, are not sufficient to occupy a moiety of his time. I believe that to confer these duties upon the Secretary of State would add greater dignity to the office. I shall, therefore, for the present, sustain the motion of the gentleman from Onondaga. I believe also, that there is among the people this desire to lessen the number of public offices, and to lessen the amount of patronage. I think with the statement of the gentleman from Onondaga, that if these offices of superintendent of the insurance department, and the superintendent of public instruction, were made especially to answer to the wants of begging and expectant politicians, the fact clothes them with a stigma and prejudice that would induce us to go a great way in dropping them.

Mr. M. I. TOWNSEND—Will the gentleman from Queens [Mr. S. Townsend] allow me now to reply briefly to the statement of the gentleman from Onondaga [Mr. Alvord] that the insurance department of this State was created to give an office to a political favorite. I do not wish that statement to go unchallenged. I undertake to say here upon my own responsibility as a member of this Convention, that that office was created because the necessities of this S ate positively required it, and that the losses which we sustained in our city of the whole of the insurance of which we were robbed through the neglect of the previous "old fogy" system of the State was pressed upon the Legislature, among other considerations, to create the department of insurance, and that the same cry came up from other parts of the State, and it was not merely a political office. And I will state further that the office of the superintendent of the insurance department and the department together have saved this State more than five millions of dollars, and probably more than ten millions.

Mr. ALVORD—I wish to say in connection with that, that the office of superintendent of insurance was created under a know-nothing organization for the purpose of rewarding a favorite of that party, but he having failed to come to time another man got it.

Mr. VAN COTT—I would like to inquire what the insurance department has to do with the question under consideration?

Mr. S. TOWNSEND—I was stating when I gave way for my friend from Rensselaer [Mr. M. I. Townsend], that the adoption of the amendment of the gentleman from Onondaga [Mr. Alvord], will clothe the office of Secretary of State with greater dignity and power and influence. I fear that these considerations, which undoubtedly swayed the State regardless of whichever party may have been in power in olden times, that the candidates for the position of Secretary of State should be men of eminent literary attainment and education, have been lost sight of. I believe that both parties in olden times—in the days of John A. Dix, and Azariah Flagg even—for I believe he once held that office—certainly John C. Spencer did—consulted these very important requisites, and by so consulting them, the office possessed greater dignity and character than it has since. A gentleman says, that the Secretaries of State were appointed then. Very well, we know the influence that controls appointments, and certainly men would be selected for appointment who possessed the qualifications of education and attainment, fitting them for the responsibilities of the bureau of education and public instruction. These are the brief considerations which induce me to support the amendment of the gentleman from Onondaga [Mr. Alvord].

Mr. HALE—It has been stated by the chairman of the Committee on Education [Mr. Curtis] that this section was a unit; that he considered the adoption of the amendment proposed by the gentleman from Onondaga [Mr. Alvord] as raising and involving the question as to the whole section. I think in that, the chairman of the Committee on Education is right—and if he was right, I shall be in order in discussing freely the question as to the propriety of abolishing the Board of Regents by this Convention, and substituting in its place a board of education, which is proposed to be created by this section. It is with very great reluctance that I rise to discuss this question, because I have been unable to make any preparation, and feel unable to follow the gentleman from Richmond [Mr. Curtis] who is so familiar with the duties and constitution of the Board of Regents. Still, from what I am able to gather, both from his remarks, and other sources, I am of the opinion that it is entirely inexpedient for us in this Constitutional Convention, to make this change in the system of education in the State—a change which in the first place proposes to constitutionalize the office of superintendent of public instruction. I do not think that is necessary. I think so far as the qualifications of such an officer for performing the duties of the position are concerned, we have been just as well served since that office was created, as we would have been if it had been created by the Constitution instead of by act of the Legislature. I think, moreover, we were just as well served before that office was created, and when the Secretary of State had charge of the interests of education, and the public schools in this State, as we have been since; and looking upon it as a practical question, I think we are just as likely to be well served in the future as we have been in the past, if these duties are devolved upon the Secretary of State where they originally belonged, and for that reason I shall vote for the amendment of the gentleman from Onondaga [Mr. Alvord]. The theory upon which this section is framed, and upon which I suppose the committee have acted in proposing it, is that the educational interests of the State require that the common schools and the universities of this State should be under the control of a

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single board. The proposition is that a board of education, to be created under this section, shall have a general supervision of all the institutions of learning in the State. At present, as the members of this Convention are all aware, the public schools, and the union free schools, which last have some of the characteristics of academies, are under the control of the superintendent of public instruction, and the colleges and universities, so far as they are under the control of any authority, are under the supervision of the Board of Regents. I have listened with a great deal of interest, as I always do, to the eloquent remarks of the gentleman from Richmond [Mr. Curtis], but I have failed to discover, from any thing that he has said, any good reason for our doing away with the distinctions which at present exist between these two classes of educational institutions. I thought the gentleman a little inconsistent in professing the very great respect he did for the Board of Regents, of which he is a distinguished member. There seems to be, in the remarks he subsequently made, something of sarcasm, too much so to be congruous with professions of respect for that board, and self-congratulation that he was a member of it. Among other things, he quoted to us the remarks of the poet Halleck, who expressed an apprehension that he might become as ignorant of books as a president of a college, or a Regent of the University. He also said that the Board of Regents had fallen into disrepute; that intelligent men inquired what the board was; he said that it was a quiet body, and kept out of the newspapers—and so quiet as to lead many to suppose the board had ceased to exist. Now, Mr. Chairman, if there is any force in this citation from the poet Halleck and from "intelligent men" in several parts of the State, I do not see what the gentleman from Richmond [Mr. Curtis] has to congratulate himself upon in being a member of so obsolete and disreputable a board, a board which seems to be a common subject of ridicule. It seems to me, if I was connected with an organization which I regarded as dead in public repute, and which was so open to the shafts of ridicule that ignorance of books was supposed to be a characteristic of its members, I should try to sever my connection with the body, rather than express regret that the interests of education required me to sacrifice such a position. But, Mr. Chairman, I think we can see, from the statement of the gentleman in regard to the character of the gentlemen in the Board of Regents is held, that these remarks which are aimed at it are rather ill-considered. We have three members of that board in this Convention. I am sure we should, none of us, who modestly regard ourselves as ignorant of books, compare ourselves in that particular at least with any self-depreciatory motive, with either of these members. Certainly, the distinguished gentleman from Richmond [Mr. Curtis] himself, and the other gentlemen composing that board who are members of this Convention, are rather remarkable for their knowledge of books than for their ignorance of them; and, so far as I know, the same remarks might well be applied to all the members of that board. It has been remarked by the gentleman from Richmond [Mr. Curtis] that since the organization of that board up to the present time it has been composed of gentlemen, many of whom are as distinguished for learning as are the members of that board who are also members of this Convention. Some names have been mentioned by the gentleman—distinguished names in the literature and scholarship of the country. I think the fact that the board is a quiet body, that it keeps out of the newspapers, although the result may be that the people have but little acquaintance with its labors and know nothing of what the members of that board do, and in their ignorance inquire whether such a board does still exist, is creditable to the board rather than a reason why we should, by constitutional provision, strike it out of existence, and thus verify the mistaken notion as to its want of vitality which these ignorant people may entertain. Now it is said that this board has fallen into disrepute among the people. What evidence have we of that? A memorial, a copy of which has been sent to me, and which I hold in my hand, and which I believe has been sent to every member of the Convention, I understand to have emanated from the office of public instruction, and have been extensively circulated. The communication is signed by several gentlemen from Albany, and it urges upon those to whom the memorial is sent that they should sign it and be sure and send it to the Convention. I think that gentlemen here are aware that great efforts were made by persons connected with the office of public instruction to procure a general subscription to this memorial in order that floods might come in upon this Convention. I am told that the number of petitions which have been sent in here is very small and considerably less than the number of remonstrances against the abolition of the Board of Regents which have come in from officers of institutions who have had the best opportunity to judge of the manner in which the Board of Regents have performed their duties. From academies in all parts of the State remonstrances have come to this Convention against the abolition of the board, and the petitions for its abolition which have come in from private individuals, have been fewer in number than the remonstrances against it. Let us look at some of the reasons that these gentlemen in Albany who signed this communication, state for abolishing this board. They say "The memorial is sent to you in the belief that you fully indorse the free school law of 1867, and desire the complete triumph of the free school system, applied as well to the higher as to the common schools." Now, Mr. Chairman, what has the free school law of 1867 to do with the Board of Regents? The effect of that law, as I understand it, was to abolish the rate bill, which existed in common schools of this State, so as to make them free, and so that parents who were in indigent circumstances, would not be obliged to pay a certain tax proportionate to the number of children they sent to the school, and that thereafter the public schools should be free to all the people of the State. This communication was signed by two of the clerks in the office of the superintendent of public instruction. Why do they desire the abolition of the Board of Regents?—for that is

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the prayer of the memorial. They say that they desire all to sign it "who desire the complete triumph of the free school system." There is nothing in the free school law of 1867 which renders it necessary to abolish the Board of Regents. If they mean that there is any thing in this section of the proposed article which provides that all the colleges in the State, and all the universities in the State are to be compelled to throw their doors open for pupils without charge, that is one thing; but that does not follow from the abolition of the Board of Regents. I think that the gentlemen of this Convention, however much they may be in favor of the free school system, are hardly prepared to say that there shall be no institutions hereafter higher than the public schools which shall charge tuition for scholars. Now, I am as much in favor of free common schools as any one can be. I believe that the State should provide a common school education for every child throughout this State. I doubt, however, whether it is the duty or the right of the State to tax the inhabitants to give any thing more than a good common school education to the children of this State, and I very much doubt whether such a provision would be a boon to the rising generation of this State. I know that what little education I was fortunate enough to obtain, I obtained only by my own exertions and those of my friends. But I do not think, however defective my education may have been, it is any more defective or any the less thorough than it would have been if the institutions which I attended had been obliged to throw their doors open without charge and I had been relieved of the necessity of obtaining a portion of my education through my own exertions. But unless that is the motive of the paragraph which I have been reading it is entirely delusive and has nothing at all to do with the subject. We have made provision by the laws of this State by which the children of this State can obtain not only a common school education but a good academical education at the expense of the public. The abolition of the Board of Regents will not render the system any more complete or any more effectual; and if the people think, or if any member of this Convention thinks it is desirable to go further to tax the property of the people of this State for the purpose of making eminent scholars of all the children of this State, and giving them opportunities for getting a thorough classical, scientific and collegiate education entirely at public expense, I would ask them whether it is not an experiment, and if so, whether the experiment should not first be tried under an act of the Legislature rather than a constitutional provision. Now, Mr. Chairman, the gentleman from Richmond [Mr. Curtis] argued that the powers and duties of the Regents of the University were small; that colleges were not obliged to apply to the board for their charter and that in many cases they did not apply, and he mentioned the Cornell University, where the application for a charter was not made to the Board of Regents but to the Legislature of the State.

Mr. CURTIS—If the gentleman will allow me, I made no especial mention of the Cornell University except in connection with the name of its president, Mr. White.

Mr. HALE—I misunderstood the gentleman. I supposed him to refer to the Cornell University, though perhaps he did not mention the name. I understood him to refer to that, because of the views he has expressed in regard to that institution when he has referred to it. At any rate, it is a fact that comes within general observation that that University did not apply to the Board of Regents, but to the Legislature for its charter. I say, if it is desirable that the Board of Regents shall have additional powers, and that the Legislature shall be prohibited from granting charters, that is one thing. The proposition made by the committee does not accomplish this. In addition to that, I would say in regard to the university which I have named—the Cornell University—no matter what powers have been conferred upon the Board of Regents, or the board of education proposed here, there were circumstances which are familiar to all, which would have prevented a charter being granted by any power short of the Legislature. A great portion of the funds of that institution came from the United States, and belonged to the State, and of course an application to the Legislature was necessary in order to get the grant in behalf of the institution. But whatever may be the want of power of that board in relation to chartering colleges, this question is not at all affected thereby. A board of education would be no better than a Board of Regents in this respect, unless a prohibition should be put into the Constitution against the Legislature chartering colleges. The age of the Board of Regents has been referred to—not that of the members of the board, but of the board itself. It has been characterized in the early part of our sessions as an "antiquated body," and the charge of "old fogyism" has been brought against its members. I do not feel called upon to defend the members of the Board of Regents from that charge, but I will admit that this board, as it is at present constituted, has certain "old fogy" attributes, which we do not see now-a-days as often as we would like to, and which I hope we shall not, by constitutional enactment, put out of existence. This board of gentlemen has, without any pay or reward whatever, performed the duties that are imposed upon it, and so far as I have been able to learn, has performed them well. I know it is exceedingly "old fogyish" for men to work in this generation without pay, and I find that the committee have guarded in the section against the continuance of such atrocious "old fogyism," by inserting in the section which they propose here a constitutional provision that "the term of office and compensation of members shall be prescribed by law." Therefore, if this section shall be adopted, we shall have one modern improvement; in place of officers who perform their duties without pay, we shall have a board of gentlemen who, I have no doubt, will stand up and draw handsome salaries without flinching. [Laughter.] I think the gentleman was a little unfortunate in some of the illustrations made use of by him, in arguing in favor of the retention of this article. He made a high and deserved eulogy upon certain colleges in the East

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and the West, and reflected somewhat (at least so it seemed to me), upon the institutions of learning in this State as compared with those of New England and Michigan. Now, Mr. Chairman, I do not think that the position and standing in this land of Harvard University and Yale College, or of the University of Michigan, are due to any system different from that pursued in the State of New York. Those colleges have, from causes which it is not necessary to reiterate, and many of which I should be unable to recite, grown strong. Yale College and Harvard University have the prestige of antiquity. They have been long established, have been liberally endowed, and have been admirably managed; and the consequence is, that they have their present position in the land. In regard to the University of Michigan, I cannot speak with knowledge of the facts except this, and I call the attention of this Convention to the fact that the State of Michigan is the only State in the Union, so far as I can discover, which by expressed constitutional provision, separates the functions of the board of education, which has charge of the common schools of the State, from those of the Regents of the University, who have charge of the higher institutions. Therefore, if there is any thing to be attributed to the State government in promoting the character of the University of Michigan, it is an argument in favor of retaining, by a constitutional provision, the Board of Regents, rather than in giving the whole control of the public schools, and academies and colleges, to one board. I may be mistaken in saying that Michigan is the only State which makes the separation, for I believe that Nevada, and one or two of the new States have a similar provision; but in the State of Michigan the board of education has charge of the public schools, and Normal School, while the Board of Regents have conferred upon it the authority over the University of the State. I have yet to learn, as I stated before, any good reason why, we, in framing a new Constitution for the State of New York, should decide that hereafter all these duties shall be performed by one and the same board. The gentleman spoke of the pride which teachers in this State have in their boys being admitted in the University at Michigan. He argued that this pride was not entirely on account of the happiness that they had in the assurance that the boys were well educated, but also in the still greater happiness they had in thus showing that they were such admirable teachers and educated their boys so well. Now, Mr. Chairman, I apprehend that most of these boys who have been admitted to the University of Michigan from this State have been educated in the academies of this State, in those institutions which are under the control of this "old fogy," unpaid board. So that I think this commendable pride which the teachers of the academies in this State have in their great success in so training children that they could be admitted into the University of Michigan, is an argument which favors the existing arrangement in regard to the academies of this State, and which shows that under the regents they have attained a respectable degree of perfection. So far as the name of this corporation is concerned, I do not think it is a very important question, nor one that should influence the members of this body. A good deal of stress is laid in these memorials upon the asserted fact that we have no university in this State; and the gentleman from Richmond [Mr. Curtis] has shown clearly, I think, that there is not a university here in the sense in which Oxford and Cambridge are universities; but it is a name applied to all the colleges of this State so far as they are under the supervision of this Board of Regents. They are, indeed, to a small extent, but still they are to some extent, under the supervision of this board, and to that extent I can see no great impropriety in calling this aggregate of colleges a university. Of course they do not constitute a university like that of Oxford or Cambridge. They have not the same unity; they have not the same prestige and connection with each other that the colleges have which constitute the great universities of Cambridge and Oxford in England. But in so far as they are under the supervision of this Board of Regents I cannot perceive any great impropriety in calling this aggregation of the institutions of learning a university. But this is a matter of very little importance. The name was given to it by the Legislature. If the people, through their representatives in the Legislature, are dissatisfied with the name, it is very easy to change it; and if there is any defect in the system as it at present exists, if any amendments are necessary to confer greater powers upon the board, if the board should have greater authority or less authority, the Legislature can make the necessary changes in this regard, and conform it to whatever the people may require. But I do not think the people require that this board shall be abolished. I do not think that the number of petitions which have been brought in here shows any desire of that kind on the part of the people. I do not think that the remonstrances which have been sent in, coming from all the sources whence they do come—from that class of men in the State who are most familiar with the operation of this board—show this, and I think that this Convention should be very careful before it undertakes to strike this board out of existence. I do not advocate the continuance of this board by express provision, but I protest against our undertaking to abolish it. If it is a board which should go out of existence, let the body which created it abrogate it. The Legislature has abstained from the exercise of the power which it has to abolish this board for a period of over seventy years, and I think it has wisely so abstained, and, as a member of this Convention, I am in favor of letting it alone. The gentleman closed his eloquent remarks by a parting word to the distinguished and venerable body of which he so deeply felt the honor of being a member, and of which I may say he is a very distinguished ornament. I have only to say that his address of farewell was rather premature, and to express the hope that he may yet have many years of delight in the convocations of the Regents of the University, and that it may be a long time before he will find it necessary to bid that venerable institution a final farewell.

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Mr. KINNEY—I do not rise to discuss this question, but to protest against the idea suggested by the gentleman from Essex [Mr. Hale] that a vote upon this amendment to the section is a test vote in regard to the other paragraphs in it.

Mr. HALE—I merely mentioned that as an apology for discussing the whole subject. Of course it does not necessarily involve the whole question.

Mr. KINNEY—While I shall vote for this paragraph as it stands, I shall vote against the amendment of the gentleman from Onondaga [Mr. Alvord], for if there is any subject in the State of New York which should be put into the Constitution; if there is any thing that should be constitutionalized because of its great importance, it is the all-important, overriding interest of education. Sir, I regard it as being paramount to every other interest in this State. I regard this article as being more important to the people of the State, to every man, woman and child in the State than any other article that has been under consideration in this Convention. Yet, sir, we can constitutionalize the canals, the ditches upon which farmers float their truck to market, but when we talk about constitutionalizing the very basis of the government, the foundation upon which it rests—the education of the people—we find gentlemen who oppose it, and argue in favor of leaving it always in the hands of an ever changing, ever fluctuating Legislature. Now, I am in favor of making the subject of education the subject of a distinct and separate department in our State government; a department having the education of the children of the State under its control and supervision, and having nothing else, but keeping aloof from all the other departments, which are, to a great extent, political in their character, or at least more so than the department of education.

Mr. WAKEMAN—The amendment now under consideration I believe is that of the gentleman from Onondaga [Mr. Alvord], to strike out from this section the office of the superintendent of public instruction. Now, Mr. Chairman, as has been well said by the gentleman last on the floor, is there any one subject of more importance than that of education? If the question were to be submitted to the members of this Convention individually, and each one of us called upon to say what subject ranks higher than any other as connected with the welfare of the people, with the welfare of the State, with the welfare of mankind, the answer of each one would be, education. This being so, I ask, sir, if in this great State, if in this Convention, where we have been assembled for months to revise and amend the Constitution, that shall be worthy of our great State, it is not right that we should put into the Constitution a provision for a head of that great department? I ask if it is not due to the interests of education in this State, and also in other States which may hereafter call like Conventions, and which will have our proceedings before them, as we have now the proceedings of other States before us, that we should recognize in the body of this Constitution this chief officer of the department of education, a superintendent of public instruction? But it is said that the duties of this office can be performed by some other department. That may be true, sir, but if we admit that as a reason why this officer should not be created, it is an equally good reason to be applied in other instances, and we might say the same thing in reference to a great many other departments of the government. I submit, Mr. Chairman, that it is right, and proper, and necessary, that we should here put into the body of this Constitution a provision for the head of this department, a provision that shall show the estimation in which we hold this subject. Now, sir, this section does not go so far as I have indicated here; it only recognizes the fact of a superintendent of public instruction, who is to constitute one of the board of education, leaving it to legislation to prescribe the special duties of the superintendent of education. A few days ago I had the honor to submit some remarks in reference to the appointment of the chief justice of our court of appeals. I insisted then, that in view of our position as a State, we ought to have a chief justice who should be known as such, and that it should be known who he was. So now, sir, I insist that we shall constitutionalize a head of the department of public instruction. I believe that in our part of the State, at least, the people feel that the office of superintendent of public instruction has been beneficial to the common schools of the country, and they believe that education should be made a specialty, and should constitute a department of the government. But how can it be so if you devolve the duties of the superintendent of public instruction upon the Secretary of State? His title of office does not indicate any thing of the kind, nay, the very title of his office and the duties connected with it, preclude the idea that education could be made a specialty with him. It would be simply a bureau in that office. Now, I am not prepared to speak on the subject generally of the change proposed here in regard to the Regents of the University, but it seems to me, that at this age of the world, and at this day, we should have a board of education in this State, and but one board which should have control over the entire matter. Now, sir, it is difficult to define the powers of this ancient institution, at least from what has been said by one of the honorable members of this Convention. It appears that the Board of Regents have not as much power as the trustees of a public school. Now, ought we not to constitute one board of seven members as recommended by this committee, and make it their special duty to take charge of this particular branch of our government, and can we not in that way secure the discharge of those duties with more vigor and power than this Board of Regents can possibly discharge them? It seems to me, from my present light on the subject, we should establish this board of education, in which there should be a superintendent of public instruction known as such, and that we cannot dispense with such an officer—an officer who has performed his duties so well, according to the powers that have been given him in the past. Certainly sir, I have no hostility to the Board of Regents. I respect

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and revere the names of the men who are members of that institution, but so far as the remonstrances against abolishing that board are concerned I know where they have come from. The academies that have received a share of the school fund, have kindly remonstrated against abolishing the Board of Regents, and they do not know where they will be placed hereafter. But I am satisfied that this board of education which it is proposed to create, will take care of the schools of the State. I am opposed to striking out this section, and with the present light I have upon the subject, I think I shall vote for the proposition substantially as reported to this Convention by the Committee on Education.

Mr. ALVORD—Inasmuch as my proposition has not been acted upon, I desire to withdraw it and to substitute the following:

"The Secretary of State shall be superintendent of public education, and he shall as such have such powers and perform such duties as may be prescribed by law."

Mr. A. J. PARKER—I care very little, Mr Chairman, whether this amendment of the gentleman from Onondaga [Mr. Alvord] be adopted or rejected. I am one of those that believe that the Secretary of State has ample time for the discharge of these duties. It is notorious that the duties of his office now occupy but very little of his time; that that office is a mere clerkship, the duties of which are discharged by his deputies, except the services that he performs at the canal board and upon other boards, which occupy but very little of his time. I believe the duties of the office of superintendent of common schools were never more faithfully discharged than they were under Mr. Secretary Dix and Mr. Secretary Flagg and Mr. Secretary Randall, and until this day the decisions of General Dix, as superintendent of that department, are quoted with respect everywhere, and as the highest authority in every portion of the State. But I care very little whether this amendment be adopted or not. I think it would be wise to reduce rather than to add to the number of salaried officers of the State, as it is proposed by another part of this section to do. But the discussion has assumed a much wider range. I came in when the gentleman from Richmond [Mr. Curtis] was making his eloquent remarks in favor of the abolition of the Board of Regents, which is subsequently provided for in the section under discussion. Now, I have known something of that Board of Regents. I served as a member of it for ten years, and I have been pretty well acquainted with its operations since I resigned. I am one of those who believe that the duties of that board have always been most faithfully and most successfully discharged; and I cannot at all concur with the remarks which have been made leading to a different conclusion. The members of that board, chosen as they are from time to time by joint ballot of the Legislature, represent all the changing and varying parties of the State. The action of that board has never been partisan. It has been connected with no rings, no speculations, no attempts to make money out of a public duty. There is not a man living that dares to stand up in this Convention or elsewhere, and charge any thing different upon any member that ever served in that board. Its duties have been most faithfully discharged, and singly with a view to the public good, and they have been discharged without compensation. It is said to be an antiquated institution, and my colleague [Mr. Harris] in one of the first days of our session, spoke of "that antiquated institution, the Board of Regents." Aye, it is antiquated, antiquated in one respect, that it is the only institution left in this State where public duties are discharged from merely patriotic motives, and without compensation. I know it is an antiquated and obsolete idea that a man of this day should think of serving the State, or of serving even the sacred cause of education, without compensation. But, sir, the Board of Regents not only serve without compensation, but many a month is spent by its members in the course of the year in traveling all over this State to visit the colleges and academies, incurring large expenses without drawing one dollar of compensation from the State. I remember that in one single year, when a member of that board. I traveled twelve hundred miles in the discharge of the duties connected with it, and I never charged the expenses to the State. I could have done so, but such is not the practice of the members of the board. They have a higher compensation in the consciousness of doing a public good. But it is said that the institution is not successful. I challenge a full and fair discussion of that proposition. I say, on the contrary, that there is not in this Union a State where the interests of education are so well cared for, and so carefully and successfully fostered as they are in this great State—the Empire State, not only in power and numbers, but in education also. We have at this moment twenty-three colleges in successful operation. We have from two hundred to two hundred and fifty academies also in successful operation. These institutions afford to the rising generation of the State the most ample means for a thorough and complete collegiate or academical education. But it is said by the eloquent gentleman from Richmond [Mr. Curtis], that there are two colleges in the Eastern States that eclipse ours, and one in Michigan. Far be it from me to detract at all from the just credit that belongs to these colleges. I have every personal reason to respect and regard them. But is it fair to compare our colleges with Harvard and Yale when we consider the great advantages which they have had over us. Those venerable institutions have been in existence for more than two hundred years, and during all that time have been fostered, aye cherished dearly, by all around them as the favored pets of the rich men of the States in which they are placed, and in that way they have been enriched beyond what gentlemen would believe, if I should state it upon this floor. During the last hundred years the bequests that have been poured into the treasuries of these colleges have been most bountiful, and there is not a year elapses in which you do not hear of large contributions being made to them by wills and gifts. They have become so rich, sir, that they can control advantages which other less favored institutions cannot. But it is said also that the

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State of Michigan has a university more prosperous than any of our institutions in this State. My friend from Richmond [Mr. Curtis] should not forget that the University of Michigan was planned and carried out and brought to the height of its glory by a graduate of Union, Dr. Tappan, a classmate that I should not readily forget.

Mr. CURTIS—If the gentleman will remember, I expressly mentioned that fact.

Mr. A. J. PARKER—I did not hear it. Union College in this State lays claim to the credit of having educated the gentleman who organized and gave reputation to Michigan University. But, sir, why is it that the University of Michigan has so far outstripped the colleges of this State? That institution has had most abundant means supplied to it, not of course in that new country from private bequests such as in Massachusetts and Connecticut have enriched Harvard and Yale, but from the bounty of the State in the immense grants of public lands of great value that have been made; grants so bountiful that the institution has been made free; and that is the secret of its vast success. Although its collegiate students do not exceed in number those of some institutions in our own State, yet it has now some four or five hundred medical students and three hundred law students attending its lectures; and my worthy colleague [Mr. Harris] would by no means be willing to admit, nor can I in his behalf admit, that those three hundred law students were attracted to that institution by any greater ability on the part of the instructors there, than is to be found in our own humbler institutions here. It is because education there is free, because students can go and drink at the fountain of knowledge "without money and without price," that the Michigan University is overflowing with numbers. Give the same wealth that Harvard and Yale and Michigan have, give that wealth to any one of our institutions, and I will place it by the side of either one of those, and I will hazard my reputation that soon it will not be far behind them in the glorious race in which they are all engaged. Why does the gentleman from Richmond decry the institution known as the Board of Regents of the University? It is antiquated: so are many other things. The Christian religion itself would fall under that condemnation. Why does he seek to remove gentlemen who are willing to serve without pay, to give their time and talents to the State without compensation, and to appoint a board that shall be political in its character, and that shall be paid out of the treasury of the State? Is it wise to add to the pensioners upon the public treasury, when we have already, and can have the services of those who are willing to discharge the duty without compensation? But it is said that the public call for this change. Now, sir, the history of that call has been given already. It originated with a few very worthy gentlemen in this city. I have before me a copy of their circular, sent out in stereotyped editions. We are told that petitions have been sent in for the abolition of the Board of Regents. How many? I have been at the pains since I come into this room to-day to inquire. Before our adjournment in September, twenty-six petitions were presented in favor of the abolition of the Board of Regents, and fifty remonstrances against it. Up to this moment, more remonstrances have been presented against the abolition of the board, than petitions for its abolition.

Mr. CURTIS—Will the gentleman allow me a moment?

Mr. A. J. PARKER—Certainly.

Mr. CURTIS—I should like to ask him, as the petitions are declared to have proceeded from the department of public instruction, whether the remonstrances did or did not proceed from the Board of Regents.

Mr. A. J. PARKER—Very likely; but my friend from Richmond [Mr. Curtis] ought to know better than myself—he is a member of the board. [Laughter.] I am not, and I give him the benefit of any statement he makes on that subject. Now, look at this a little further. Not one college in the State has petitioned for the abolition of the Board of Regents; not one of the two hundred and fifty academies in the State has petitioned for the abolition of the Board of Regents. Ten of these colleges have remonstrated against its abolition, and more than fifty academies have so remonstrated. All these are institutions especially interested in the question, whether they shall be governed and controlled by a Board of Regents, or by a political board authorized by this body. I have a list here which has been handed me, of the colleges that have so remonstrated. It includes the University of the city of New York, the College of St. Francis Xavier, St. John's College, St. Stephen's College, Hamilton College, Hobart College, Genesee College, and Madison University. There lies before me the last annual report of the Board of Regents. It is said that this board has not power nor sufficient control over the colleges and academies to make itself useful, and to build up a good system of education. Look at the report itself—it is its own monument of their labors and their success. It contains the report and annual statement of every college in this State, and of nearly all its academies, just such statements as we want if we are to judge of their progress and success. Why, sir, a few weeks since, a gentleman distinguished in the literary annals of the old world, the proprietor of *McMillan's Magazine*, so well known everywhere, came to this country, and when in this city asked that he might look at the report of the Board of Regents, as he desired to make himself acquainted with the system of education in this State. That report was handed him. He studied it diligently and faithfully, and he afterward said that he had looked upon it with amazement, and that there was not another country upon the earth where such a duty was discharged so faithfully, and that nowhere else was a system of education so successful as this had been here. Pray, why is it not a success, when the means of education are brought to all in the State in the common schools (not of course under this department), the colleges and the academies? Ah! but says my friend from Richmond [Mr. Curtis], we find a great many young gentlemen belonging to the State of New York being educated at other institutions, at Yale and

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Harvard. Yes, sir, we do. The gentleman must consider that there are a great number to be educated in this State with its four millions of people. Let him go to the colleges in this State, and he will find young men there to be educated who have come from the South and the West, aye, and sometimes from the East. I refer him to a single institution in this city, with which my distinguished associate, Judge Harris, is connected, where he will find that out of a list of perhaps one hundred students, three-quarters of them are from other States of this Union, and some from right alongside of Harvard University. It furnishes no argument, therefore, against us, that our young men, for some good reason, or some accidental reason, perhaps occasionally seek education elsewhere. It has been said, sir, and I return to it, that this Board of Regents has not power enough for the successful discharge of the duties devolved upon them. Then give them more power; and that duty belongs to the Legislature. The Legislature created the board, it controls it, and it can abolish it if it will. But what power would you give them? An absolute despotic power, as in a military government? That they do not desire, they do not need. They cannot accomplish the desired results with any such power as that. Have they not all the power they want? They have the power of visitation. They visit the colleges and the academies when they please. They call for reports, and do they not get them? They do, sir, with but very few exceptions. Their report of last year shows how general and almost universal has been the response. But if they want more power, give it to them. Thus far it has not been a despotic power that that board has exercised. Its power has been exercised in kindness, and in that very kindness we see the secret of its success. It has the distribution annually of forty thousand dollars to the academies; it distributes twelve thousand dollars for the education of teachers, and three thousand for the purchase of books and apparatus, and the very expectation on the part of each academy that it will receive its share of this literature fund, is a stimulus to induce it not only to come clear up to the standard and requirements of the board, but to endeavor to surpass them. The board had power enough, sir, to bring these educational institutions of ours up to their present high condition of efficiency. Why, there is one single institution, if I may call it such, connected with this board which has accomplished wonders here. I refer to what is called the University Convocation. Every year learned men from the colleges and academies in this State, assemble here at Albany to discuss together the best means of instruction; and the most gratifying results have already been found to flow from this meeting. That institution is not a very antiquated one. It has only existed for a few years, but it has proved such a complete success that I have no doubt that hereafter it will be permanently established. For myself, sir, I believe it is our true policy to leave this subject entirely alone. I believe that the Legislature have ample power, supreme power over the whole subject of education. They have always exercised that power without any interference or control on the part of the Constitution, and I prefer to leave the power with them still. I do not know why this body should be called upon to abolish the Board of Regents; which was not created by the Constitution. Created as it was by the Legislature, if the public shall call for a change, the Legislature can make it, and then if it is found to be a mistake, it will not be out of their power to correct the mistake. I do not believe, Mr. Chairman, that the public will sanction the change which is here proposed. I do not believe that they have called for it. I think it unwise in us to meddle with it; and when my friend from Richmond [Mr. Curtis] concluded his eloquent remarks, he could not refrain from singing in solemn and beautiful notes his own death song, in view of his approaching official dissolution as a member of this board. He spoke in tones also solemn of the wreck which was about to be made; the ship that was to be stranded, in which he was a passenger with the rest. He saw around him the raging billows, and the scattered spars, and the regents (of whom he was one) struggling in the briny deep, *rari nantes in gurgite vasto*. I trust, sir, that this is only a picture of the imagination, and that it will pass by as an idle dream, but if this wreck should happen, and he makes this great sacrifice for the public good, or rather for the good of gentlemen who are to be appointed to office on good salaries he must not forget that he was the pilot that directed the ship upon that treacherous shore; he will not be able to excuse himself as did Palinurus of old, that he fell into slumber, for he has steered the ship upon the rocks with his eyes wide open; and I can tell him that if there should be a wreck he may well hang up his dripping garments in the temple of Neptune as a votive offering for his escape, for the people will hold him responsible for the great wrong that he has done.

Mr. GOULD—I desire to ask the gentleman from Albany [Mr. A. J. Parker] in what section of this article he finds any abolition of the Board of Regents of the University?

Mr. ALVORD—All the way through.

Mr. A. J. PARKER—My friend sitting back of me says all the way through, and he knows better than I do, for I have only just come in.

Mr. ALVORD—If the gentleman from Columbia [Mr. Gould] will allow me, I will read the last paragraph. It is that, "Such board shall have general supervision of all the institutions of learning in this State," and the chairman of the committee also says so.

Mr. GOULD—Suppose, for instance, this whole article is adopted by the people and goes into operation as a part of the Constitution, I want to know if under existing laws the Board of Regents of the University will not still have the custody of the geological collection, whether they will not still have control of the State library?

Mr. A. J. PARKER—I do not think they will have control even of the mastodon. [Laughter.]

Mr M. I. TOWNSEND—I hope it is the sentiment of this Convention that it is expedient to hold sessions in the afternoon, and for the purpose of moving a session at four o'clock, or at some earlier hour this afternoon, I move that the

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committee now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. M. I. Townsend, and it was declared lost.

Mr. VERPLANCK—I do not propose to go into the discussion which was entered upon by the gentleman from Richmond [Mr. Curtis], because that subject is not now properly before the committee. I rise only to say a word with reference to the amendment proposed by the gentleman from Onondaga [Mr. Alvord]. That is, to abolish the office of superintendent of schools, and transfer the duties of that officer to the Secretary of State. I hope, sir, that this amendment will not prevail. It is said that the Secretary of State has not sufficient occupation. We know that he is a member of several State boards, in addition to the ordinary duties pertaining to his office. The superintendent of schools of this State should have no other duty to perform except his duty as such superintendent. He should go from county to county, from town to town, from school district to school district, entering the various schools in the State, and seeing with his own eyes the practical working of our common school system; and when that officer shall have done this, he will have performed the duty which the people expect of him, and he will not have been idle. There is not a member of this Convention who does not know that the Secretary of State never would perform this duty of visitation which I regard as the most important duty of the superintendent of schools. If that system of visitation and inspection of the practical workings of our system is to be abandoned, restore this power to the office of Secretary of State; but if it is not to be abandoned, retain the superintendent of common schools, and give him no other duties than those which belong to that office, and secure his whole time and attention for the visitation, and care, and custody of the schools.

The question was put on the substitute of Mr. Alvord, and it was declared lost.

Mr. VERPLANCK—I move to strike out from the section commencing at line seven with the word "the," down to and including the word "law" in the seventeenth line. I do not intend or hope, Mr. Chairman, to interest this committee as they have been interested by the very scholarly and eloquent address of the gentleman from Richmond [Mr. Curtis], or of the other eloquent gentlemen who have addressed the committee upon this subject. But, it is perhaps well that some common mind should call attention to the remarks that have fallen from those gentlemen for the purpose of ascertaining what the trouble is, where the difficulty is, that is to be remedied by the action of this committee. The gentleman from Richmond [Mr. Curtis], first complains of the name of this corporation or board. With due deference to the great learning of that gentleman, I suggest that the name is strictly a proper one. I know sir, that the term "University" in its generally received sense, means a collection of colleges in one place, or it means a single institution in which all the various branches of learning are taught. But if you will consider this State as a place, the various educational institutions of the State, the colleges and academies where the various branches of learning are taught, make up the University of the State. The Legislature more than eighty years ago at the suggestion of Alexander Hamilton, adopted this term, and it has never been criticised until now, and I think the gentleman should have hesitated with such high authority, acquiesced in for so many years, before pronouncing the name as meaningless. The board is charged with the incorporation of colleges and academies, and other institutions of learning under such general regulations as they may from time to time establish. They are charged with the visitation and general supervision of the colleges and academies, with the preparation of suitable forms for the use of such institutions, and with the reception and examination of reports of the colleges and academies and with the equitable distribution of the general appropriations for the benefit of incorporated academies, and the preparation of an annual report to the Legislature of the condition of the various institutions subject to their visitation. They have had charge of the State library since 1846, and during that time the number of volumes has been increased from ten thousand to seventy-four thousand. They are also made the trustees of the cabinet of natural history, and they have the supervision of the State Normal school. Here are powers enough, properly exercised, and duties enough, to occupy the attention of this board for a great portion of the year. This care and supervision is exercised not simply at the annual meeting of the board, but at the meeting of the committees of the board and through their officers; and the gentleman did not state the whole truth when he said that in the exercise of their powers they simply sit still and receive the reports of the colleges and academies. Sir, in this report of last year for which I suppose the gentleman is in part responsible, it is stated that more than sixty institutions of learning were personally visited by some of the members of this board, and various other things are stated to have been done by the members of the board, which I shall not now enumerate—all going to show that the board not only have these extensive powers, but that they exercise them and exercise them well. If they have not sufficient power, if there is any thing remaining to be done that should be done for these institutions of learning and that this board might do if it had increased powers, let the Legislature give the board additional powers, and if it should do so I have no doubt that those powers will be exercised by the Board of Regents and their duties will be discharged in the future as ably, as faithfully and as well as the powers that they have had in the past have been exercised. But what is the difficulty that the gentleman complains of? The fault, and if there is any other, I ask to have it stated—the fault is, that other colleges outside of our State are superior to any institution within our State. This, I understand to be the sole fault found, the sole complaint made by the gentleman from Richmond [Mr. Curtis] in his very learned and eloquent speech. That there are three institutions, two in New England and one in Michigan which are better and more prosperous than any

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institution in the State of New York. Now, sir, that is probably the fact, but is it the fault of the Board of Regents? They have exercised the powers conferred upon them by the Legislature to the fullest extent. If any new impetus is to be given to our institutions of learning in this State, give the board additional powers, and I have no doubt that they will be properly exercised, and that the colleges and academies will get the full benefit of them. In the board there are some members who have occupied that position for more than thirty years, men elected in 1833. The board is made up of men elected by different Legislatures of different political views, and most of them are learned and scholarly men, not entering actively into the political feelings of the day, and I have have no doubt that these learned and wise men will exercise any new powers that may be given them as well and faithfully as they have used their present powers, and quite as beneficially for our institutions of learning as any new board appointed by the Legislature. Does the gentleman from Richmond [Mr. Curtis], hope that in the selection of this new board, the appointments would be controlled by the influences he has spoken of to-day? Is the millenium at hand? Will a political Legislature appoint this board of education without regard to politics? Why, sir, the very provision that the members of this new board are to have compensation, determines the matter and answers the question. However much members of the Legislature might desire to bring about such a result, however much the majority of the Legislature might desire to do so, we know that when a party claims the offices which pay, the Legislature cannot and do not refuse to hear them, but are compelled to make appointments upon considerations very different from those which have been suggested by the gentleman from Richmond [Mr. Curtis]. It has been said here, sir, that the opposition to this section has grown out of the efforts of the superintendent of schools in this city. Now, I want to tell the gentleman from Richmond, if he has not heard it before, that there is a suspicion abroad in regard to the object of this section, which I very much regret. I rejoice with the gentleman that the Legislature in its wisdom has determined to keep this congressional fund in a single place, and to build an institution which shall be worthy of the State, and which I trust and hope will be not only the equal of the New England colleges, and of the College of Michigan, but will be superior to either of them. But, sir, there is a suspicion abroad that the motive of this article comes, not from the office of the superintendent of schools, but that learned and scholarly men having a great interest in the Cornell University, fear something from the Regents of the University, or hope for something from a new board and that this is the motive which actuates them inside and outside the Convention in their attempts to destroy the Board of Regents.

Mr. CURTIS—If the gentleman will allow me. I wish to say that I hear this now for the first time.

Mr. VERPLANCK—I hope that suspicion is baseless, I trust it is baseless; but when it is remembered that this Board of Regents has performed its duties for more than eighty years in this State without incurring even criticism until the present time, and when it is remembered what a deep interest is felt by many gentlemen, and properly felt in this new university, this suspicion has perhaps not unnaturally arisen.

Mr. GOULD—I am authorized to say, sir, that the Cornell University has not the slightest jealousy whatever of the Board of Regents, and that for anything that the Cornell University desire, they would just as soon that the Board of Regents should be continued forever as not.

Mr. VERPLANCK—I am very glad to hear that statement, because I am a friend of the Cornell University. I voted last week to devote the congressional fund to that institution, and I am very glad to hear that there is no hostility, on the part of those interested, to the Board of Regents.

Mr. GOULD—It is utterly baseless.

Mr. CURTIS—And I would add, sir, to what my friend from Columbia [Mr. Gould] has said, that from my personal knowledge of the feeling of the president of the Cornell University, this suspicion is entirely baseless, entirely so.

Mr. VERPLANCK—I rejoice that it is so. But, sir, let me ask again, what is to be gained by the establishment of this new board? The present board has done the work of incorporating the academies and colleges, and has had the general supervision of those institutions, and has had charge of various other matters pertaining to education in this State for eighty years. It is now proposed to abolish this board, and to establish a new one to be composed of seven officers, to be appointed next week or next year by the Legislature of this State. This new board, however, even if made up of gentlemen appointed for their learning and ability, and not for political reasons, will be entirely inexperienced in the matter of the practical working of our educational institutions throughout the State. They will not have the practical knowledge or wisdom on that subject that the men composing the present Board of Regents have; and if the gentleman was called upon to make a list of those best qualified to fill the office, he would find it hard to go outside the present board to get the seven members of the new one. As a member of the Legislature of this State (if he were one) acting upon the responsibility of his oath of office, if he had to select the members of this board which is proposed by this article to be created, I think he would hesitate long before he would go outside of these nineteen men to find every member of the new board. For these reasons, sir, I hope the motion I have had the honor to make will be successful, and that we will retain the superintendent of public schools, whose duty it shall be to visit the schools and inspect their practical working. I trust that this Board of Regents existing now for more than eighty years, and which up to this time has performed its duties so as not even to provoke a criticism, and which has performed them without compensation, will not be superseded by this provision of a new board composed of members who are to be paid for the work which they shall do.

The hour of two o'clock having arrived, the Convention took a recess until seven o'clock P. M.

EVENING SESSION.

The Convention re-assembled at seven o'clock and again resolved itself into Committee of the Whole on the report of the Committee on Education, Mr. PROSSER, of Erie, in the chair.

The CHAIRMAN stated the pending question to be on the motion of the gentleman from Erie [Mr. Verplanck] to strike out of the fourth section all after the sixth line.

Mr. VERPLANCK—I simply wish to add to what I was saying when the hour of recess arrived, that this is hardly the time, with our present indebtedness and consequent taxation, to establish a new board, consisting of seven members, whose services and time should be devoted to the cause, and must be paid for, and thus incur a large indebtedness for what now costs the State little or nothing. The Regents of the University have the care of these colleges and academies; they charter them, care for them, visit them, receive their reports, and do all the other work which it is proposed that this new board shall do, except the charge of the common schools, at an expense of not more than fifteen hundred dollars a year to the State. This new board would cost the State thousands of dollars, because men competent to this position, devoting their time to this work, could not be obtained without adequate compensation, adding to their compensation the other expenses, the expense of clerks and the expenses that grow up in and around such a board, the sum of thirty to fifty thousand dollars a year, instead of fifteen hundred dollars, will be the consequence. Now, I say that this Convention should hesitate before introducing this class of officers into the Constitution, at such a great increase of expense to the State.

Mr. SMITH—I regret, sir, very much that through the neglect of a public carrier, I was prevented from arriving in the city this morning in season to listen to the discussion of this question, a discussion which I am told was very interesting. I regret it because it deprived me of the pleasure and information which I should have derived from listening to that discussion. I regret it also because in submitting a few suggestions on this question very briefly, I may be in danger of traveling over ground which has been better occupied by other persons before me. Since this report has come in I have been looking for some reason why that ancient and honorable corporation known as the Regents of the University should be at once and forever annihilated; but I have looked in vain. It has been said, in substance, by those who favor the abolition of that board, that it is but slightly connected with education in the State, and that it is of but very little service to the cause of education. It may be that some members of this Convention have not given particular attention to the history, organization and functions of that corporation, and it may not be improper, therefore, for me briefly to glance at them. By so doing we shall better understand the question and be better able to decide whether we ought to adopt this article which abolishes that board. It is known to many, and should be known to all, that it is not a constitutional corporation; it is the creature of statute. It was organized originally by an act of the Legislature of the State, which was passed at its session in 1784. It is entitled "An act for granting certain privileges to the college heretofore called King's College and altering the name and the charter thereof, and erecting a university within this State." This act was amended in November of the same year, and was followed and superseded by another act, passed April 13th, 1787, which was entitled, "An act to institute a university in this State, and for other purposes therein mentioned." I may remark here that the draft of that act, it is supposed was prepared by that wise and profound statesman Alexander Hamilton, whose life and services form a part of the historic glory of our State and of the nation. This board, as now constituted, is composed of the Governor, Lieutenant-Governor, Secretary of State, and Superintendent of Public Instruction, as *ex officio* members, and nineteen other members chosen by the Legislature. It is provided by law that they may be removed by a concurrent resolution of the Senate and the Assembly. No compensation is allowed them for services, but their actual and necessary expenses while engaged in the performance of official duties are paid them by an appropriation made by the Legislature. The officers of the board are a chancellor, a vice-chancellor, a treasurer, a secretary, and assistant secretary, who are appointed by, and hold their office at the pleasure of the regents. It should be remembered, however, that the secretary and assistant secretary receive salaries for the payment of which annual appropriations are made by the Legislature. The regents are required by law to hold annual meetings at the Senate Chamber in Albany, and they may also hold other meetings during the year as their business shall require. This, in brief, then, is the history and the organization of the board. Now let us inquire what are its duties and functions, to some of which I will call the attention of the committee, for the purpose of seeing whether its connection with the subject of education is slight, as has been said by the memorialists who ask for its abolition. In the first place, Mr. Chairmain, the board is charged with the duty of incorporating colleges, academies, and other institutions of learning in the State, and exercising over them a general supervision. I should suppose, sir, that this was not a very slight connection with education, and the interests of education in the great State of New York. These institutions, these academies and colleges, are responsible to this board for the fulfillment of the conditions of their charters, and they are required to make annual reports of their financial and educational condition to the regents. All who are familiar with the subject understand that these reports are required to be very minute, and very comprehensive, embracing the entire condition of the institution, represented financially and educationally, its books, its apparatus, its course of studies, its membership, and every thing which pertains to the interest of the institution; and it is required to be verified by the oath of the president of the board of trustees. There are in the State of New York under the supervision, and subject to the visitation of the regents, two hundred and twenty academies, and I think about thirty col-

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leges, literary and medical; and yet it is said that their connection with education is very slight. These institutions have a capital of many millions of dollars, and over this the regents exercise a supervision. Moreover, the members of the board visit these colleges at commencement seasons, and the academies at their examination periods, encourage them by their presence, and report to the board, so that the regents are kept advised in regard to the state of education, and the condition of all the institutions under their care throughout the State. The regents in turn make their report every year to the Legislature so that the people, through the legislative body, are thus made acquainted with the condition and circumstances of all these institutions of learning in the State. In addition to this, the regents are required to, and do, apportion among the academies of the State annually, forty thousand dollars, from the income of the literature fund, and about eighteen thousand dollars more to academies appointed by them to instruct classes in the science of common school teaching; and yet it is said that their connection with education, and the interests of education in the State is very slight! So says the heading of the petitions that have poured in upon us in floods since we have been in session, praying for the abolition of the board. The distribution of the literature fund is made in pursuance of the provisions of law which require that it shall be proportioned "to the number of pupils in each seminary, who for four months during the preceding year, shall have pursued their classical studies or the higher branches of English education, or both." Within the last few years the regents have instituted a new and rigid system of examinations for the purpose of determining the number of pupils entitled to the distribution. These examinations are conducted in writing, and are very rigid, comprehensive and searching. I will venture to say that it would trouble many of the learned men in this body to answer some of the questions that are submitted in writing, and to which the pupils are required to furnish written answers in a given number of minutes. There are three examinations each year of this character, conducted by a committee of learned and competent men, appointed by the trustees of the institution. They are required to make their reports to the regents, who are thus enabled to distribute the fund in accordance with the spirit of the law. The system, also, stimulates exertion on the part of pupils, and tends to elevate the standard of scholarship in our academies. To show further that the regents have something to do, and do something, it may be remarked that they have eight standing committees, some of which have frequent sessions, and the committee on the State Library, I am told, meets every Monday morning; and yet it is said they do nothing. They also have the right of conferring degrees above that of master of arts, upon such persons as in their opinion, are entitled to them by their attainments in science or literature, degrees similar to those conferred by the universities in Europe. I understand, however, that they have been very careful and reserved in the exercise of this prerogative. They have not in this respect followed the example of some of our colleges, whose honors are dispensed so liberally and indiscriminately, as to render them exceedingly cheap. I am informed that the degree of doctor of laws has been conferred upon eleven persons only, that of doctor of philosophy upon three, and doctor of literature upon three only, since their organization. This certainly speaks well for their wisdom and prudence. In addition to these duties imposed by the law which created the body, the Legislature has from time to time devolved other duties upon them. In 1844 they were constituted trustees of the State Library. At that time the State Library contained about ten thousand volumes, which were stowed away in a couple of rooms in the upper part of the Capitol, out of sight and out of the reach pretty much, I believe, of the community, so that it could not be found without the aid of an experienced guide. But that library now numbers over seventy-four thousand volumes; and it includes a law department which, I am informed is not exceeded by any law library in the country, so far as American law is concerned. It also contains standard works in almost all departments of science and literature. It has, as every one knows who has visited it, maps, charts, manuscripts, medals and coins, of great value and interest; and I believe that it has nearly outgrown the building that was erected in 1852 for its accommodation. In 1845 the regents were constituted trustees of the State Cabinet of Natural History and the historical and antiquarian collection connected with it; and this, I am told, has greatly increased in extent, interest and value, since it came under their supervision and management. The State Normal School, too, which is regarded by many as a very important institution, is under the joint management of the regents and the superintendent of public instruction. And these "old fogies" were the first to inaugurate the system of normal instruction in the State. In 1835 they established departments for the instruction of teachers of common schools, in one academy in each of the eight senatorial districts of the State. This was done, I believe, in pursuance of the recommendation of General John A. Dix, who was then superintendent of common schools. The system thus inaugurated has grown until there are in the neighborhood of ninety academies in the State, where students are educated in the science of common-school teaching. The regents annually appropriate to the various normal schools, teachers' departments in these ninety academies, and to teachers' institutes over one hundred thousand dollars; and yet it is said they have but very slight connection with public education! They have also, Mr. Chairman, been charged with the management, on behalf of the State, of a system of international and State exchanges, by which official publications of other States and countries, and of learned societies, are made available to us and placed in our State Library; and in return our official documents and law reports are sent abroad. Within the last five years they have established what is termed a "University Convocation." It is a convocation composed of the officers of colleges, principals of academies,

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learned men in our own State, and savans from other States, who come together annually at the city of Albany, and there discuss questions of science, literature, of the philosophy of education, and the art of teaching. The reports of some of these discussions are worth their weight in gold, and an examination of them will satisfy any reasonable person that the connection of the regents with the subject of education is not very slight. But as there seems to be some jealousy, on the part of those who claim to be the special friends of common schools, against the regents, it may be proper to suggest, in this connection, what I understand to be the truth—that they were the first in the State to inaugrate the system of common schools, or to suggest the idea of common school education. In their annual report in 1792, they recommended the adoption of a system of common school education. The recommendation was renewed by Governor Clinton, in his annual message, and followed, in 1795, by the passage of an "act for the encouragement of schools." Following this, and suggested by it, in 1812 the law was passed which forms the basis of our present common school system. One of the honored members of the Board of Regents who, I understand, served for twenty-five years as its secretary, was the first superintendent of common schools in the State, and it has been said that to him the friends of common schools are more indebted for the success of the system than to any other man in the State of New York. I refer to Gideon Hawley. Now, Mr. Chairman, having thus briefly glanced at the history, organization, and the duties and functions of the regents, I pause to inquire what is the character of the board that it should be thus bowed off the stage—dismissed to oblivion, without reason, apology, or explanation? I will answer the question by reading, with the permission of the committee, the names of the present members. Passing over the *ex officio* members, consisting of the Governor, Lieutenant-Governor, Secretary of State, and Superintendent of Public Instruction, we have on the list Gulian C. Verplanck, Erastus Corning, Prosper M. Wetmore, Gideon Hawley, John V. L. Pruyn, Robert Campbell, Samuel Luckey, Robert G. Rankin, Erastus C. Benedict, George W. Clinton, Isaac Parks, Lorenzo Burrows, Robert S. Hale, Elias W. Leavenworth, J. Carson Brevoort, George R. Perkins, Alexander S. Johnson, George W. Curtis, and Wm. H. Goodwin. These honored names compose the present Board of Regents. Now, I desire to inquire, what does the committee that made this report propose to substitute for this board—this ancient and honorable board—composed of names such as I have just read in your hearing? If I understand their report correctly, they propose to substitute a board consisting of seven members, with the superintendent of public instruction standing at the head. The Secretary of State and Comptroller are added, making three *ex officio* members; and then there are to be added four others elected by the Legislature, to hold their office for a term of years, and to receive a salary from the State for their services. That is what they propose to substitute for this body, this body of able men, of high-toned men, men of broad views, men of ripe scholarship, men who have been willing to devote their time and talents to the service of the State, and the interests of education, without any compensation whatever. They propose to substitute a board of hirelings! And what kind of hirelings will they be? You know, sir, I know and every man knows, what kind of a body we shall have when we bring it down into party politics. These men that I have named would not—one of them—appear before the Legislature and ask for an appointment to office. They would scorn it; they are above it. Much less would they pull the political wires and resort to that low cunning which marks the course of slippery politicians. But make it a salaried office, and for a term of years, a partisan office as it would necessarily be, and you would have six-by-nine politicians, brawling, ignorant, low, cunning men, who understand political jugglery, besieging the Legislature for the appointment. In a little while, instead of the class of men that we now have, and have always had under the present system, we should see the sacred interests of education committed to the care of men wholly unfitted, in every respect, for the important trust. This would be the inevitable result. The history of the past in relation to every office that is brought down to the political arena points unerringly to this result, and I am surpised that men should be willing thus to hazard the interests of education. I have said that the present board serves without pay. From year to year they devote their time and attention to the interest of the State; they have no motive to actuate them but the highest and the purest, the welfare of the State which they serve, and in whose honor and welfare their own is bound up. But how would it be with your body of politicians, your hireling body? In the next place this article proposes a body that shall hold for a term of years, instead of holding during the pleasure of the Legislature. By the tenure of the regents they are enabled to become familiar with the workings of the various institutions of learning, the wants of the people, and the general interests of education throughout the State. But under the proposed change, with a short term, and a partisan, hireling board, at every turn of the political wheel there would be a change; new men would take the office, men not only unfitted by character and education for the position, but entirely unfamiliar with the duties of the office, and unacquainted with the educational wants of the State. By such a change the State would inevitably suffer an irreparable loss. I ask, again, why is this change proposed? I venture to say that until the sitting of this Convention there had never been any public clamor against this board. I never heard a complaint in regard to the action or the non-action of the regents I had never heard a lisp uttered against them, or any doubt expressed of their usefulness and efficiency. But all at once, and most unexpectedly, when this body commenced its sessions, we were flooded with petitions from all parts of the State praying for the abolition of the Board of Regents. There is something very remarkable about this. Why this sudden zeal for abolishing the board? Whence did all these petitions originate? I have no posi-

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tive knowledge upon the subject; but being somewhat of a Yankee, I may venture a guess, I suppose, without impropriety. They are all stereotyped—they bear the same impress; they all come from one center. I have no doubt they came from some persons connected with common schools, and who regard themselves as the special champions of common school education. I learned recently, with much regret, that, on the part of some, there is a jealousy against our higher institutions of learning. I suppose these petitions were gotten up at some central office, sent out over all the State to the teachers of the common schools, with the request that they would circulate them for signatures, and send them to this Convention. I have received them from teachers who had procured the signatures, and have presented them to the Convention, as, doubtless, have other delegates. I have no doubt that most, if not all of these petitions were procured in this manner. Had it not been for these manufactured petitions, gotten up at some central point, and sent out all over the State to these agents, you would not have heard a voice uttered against this board; not a petition would have been sent in—not a solitary petition from any part of the State. Is that the proper way to influence public opinion, and to carry a measure through this Convention? Does that seem to be high-toned, straightforward, and honest? I confess I do not think so. I do not like the manner or spirit of it. At an earlier stage of our deliberations, I had the misfortune to fall under the disapprobation of the gentleman from Richmond, the chairman of this committee [Mr. Curtis], for whose character and learning I have the highest respect. Some remarks which I made were the subject of a severe criticism by him. My position, to which he took exception, was, that upon questions of mere policy or expediency that do not involve moral right or wrong, we ought to regard, in our action here, the wishes of the people—we should consult public opinion. But my friend said: "No, that is all wrong. We must act from a high sense of duty. We must not inquire what the people think, or what they want." Well, I have never been quite able to see my error, although I have reviewed the matter with some care, and distrust of the soundness of a position that did not command the approbation of my friend, for whose judgment I have so much respect. I must now be permitted to say to that gentleman [Mr. Curtis], that I had reference then to an honest and legitimate public opinion, an opinion founded on the convictions of the people, with some show of reason for its basis; and not to a spurious, a manufacturerd public opinion, gotten up by such machinery as seems to have been employed in this case. And the rule of action which he pressed upon me with so much force and eloquence, I now commend to his serious and careful consideration. I have been unable to see any good reason that can be offered for abolishing the Board of Regents. On the other hand, I can see many and weighty reasons why we should not interfere with it. Let it still exist and serve the State in the interests of education, as it has done for more than eighty years. It is increasing its activity, and extending its usefulness more and more every year. It is faithfully serving the State without any compensation. And now it is proposed to strike it out of existence—to bury it in oblivion; and to introduce a new board of very doubtful expediency, at a great cost to the State, and without any corresponding advantages. I trust that this Convention will pause long before they constitutionalize a board like the one proposed, and blot out forever from the activities and future records of the State, that ancient, useful and honorable body, the Regents of the University.

Mr. ALVORD—The proposition is now, as I understand it, to strike out the remaining portion of this section, commencing at the seventh line, down to and including the seventeenth line. Before that is done I believe it is the right and privilege of the committee to perfect the section; and in order to test the sincerity of the gentleman who made the motion for this radical change in the management and control of the educational interests of the State in the future, I propose and offer as an amendment, to insert after line twelve "who shall serve without salary or compensation of any kind;" and strike out so much of lines fifteen, sixteen and seventeen as reads, "The term of office and the compensation of the members shall be prescribed by law," so that this board, to be constituted for the purpose of taking care of the educational interests of the State, shall serve in the same way that the present Board of Regents do, without compensation, fee, or reward. For I undertake to say that as a matter of necessity these parties must be merely a consulting board. The authority and the power in their actions must, as a matter of necessity, by way of execution, be put into the hands of the superintendent of public education or whatever other name you may call it; and these parties will meet together from time to time as a consulting board, and only in that capacity. I have no authority to speak for the Board of Regents of the University, but I venture to say that I speak what they will carry out and fulfill; that if, by the law of the Legislature, they shall be asked to take the position which this board of education will occupy, and act as counselors to the head of the department having charge of the common schools of this State, they will add it to the other duties which they perform, and do it cheerfully, and give so much in addition of their valuable time as may be necessary for the purpose of acting in that capacity as a consulting board. I believe that we can leave this whole matter with the Legislature; and if it becomes necessary to make this change, and concentrate the entire of the educational interests of the State in one body, that we may try the experiment and see if the present Board of Regents will not perform that portion of this work upon the same terms and with the same efficiency in regard to this matter, as they have in reference to the higher institutions of education in the State. But if gentlemen insist upon these changes, insist on wiping out this time-honored institution of the past, let them take from among its numbers, or take from the best scholars in the land who have so much of philanthropy in their hearts, so much of the desire to elevate the people by way of education in the State, they will find them readily

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enough — men competent to perform all the duties necessary, by way of consultation, and who will willingly and cheerfully serve the State in this regard, without any compensation whatever. What I fear in this regard is this: that if you pass this section as it is, leaving it to the Legislature to make it an office, short in its term of duration, a compensation to be affixed to it, commensurate with the idea that men may have of the public importance of the position, you will make it doubly sought for; first, upon the part of the officials who may desire the position in consequence of the salary which they will have growing out of their occupation of the office; second, because of the political influence that they can bring to bear in favor of their peculiar views, and of their party in the administration of the affairs of the commission. There is the difficulty; there is the danger, in my view of this case. I tell you, if you undertake to make an office in this State out of which grows compensation, and which is shortened by a term of time, whether you commence with the highest motives in regard to it or not, in the first instance, asking for purity of administration in regard to all the duties that they have to perform, I care not which party is in power, the moment they find that it is a lever to move vast political results they will look, not at the primary idea that they have, to the capacity and fitness of the party to fill the position, but they will look to the political capacity and fitness of the person upon whom they seek to impose the office to take care of the political interests of the party, before nominating him to the position. Then, if we are—I repeat it again—to change the present method, let us try the experiment through the Legislature to see whether the Board of Regents will not take upon themselves this additional burden, as well as that which they have now. If you determine to create a new board upon the ground of the inferiority of the present one, let us leave it to the high-minded patriotism, if I may use the expression in this connection, and I think I am right—to the benevolent, and high-minded and enlightened patriotism of the State, to find four men—I hope and trust they can find in this State a hundred men—who will come forward to perform all the duties of the position you undertake by this article to give them and let them receive as their only reward the approbation of their own conscience, and the "well done, good and faithful servants," of the people who have placed them in the position.

Mr. GOULD—I am not authorized to speak on behalf of the Committee on Education, but I can say with the utmost sincerity, as one of that committee, that I most heartily approve and accept the proposal of the gentleman from Onondaga [Mr. Alvord]. I think it is entirely proper that that amendment should be made; and it will suit me as an individual very much better than the original draft. While I am on my feet I desire to say that the theory of the committee which induces them to offer this article has not been met by a single speaker upon this floor. The ideas of the committee were twofold: first, that education was a unit; that the training up of the youthful mind of this State for the purposes of usefulness in life was a unit, that it was one act; and that it should be performed by one body having definite aims and objects in view. The other was that the body intrusted with this great and all important work should be one which comprehended fully all that was required of them; that they should be men who were trained for their work by special studies and by special occupations, so that they might comprehend precisely what was needed in this great matter. And now I ask if the common sense of mankind does not ratify that idea? Here is my friend from Kings [Mr. Van Cott] behind me, known throughout the whole State as a most eminent lawyer. There are few who would fear to intrust their lives and their properties in his hands as an advocate; nobody doubts his power as a lawyer, but what sort of a figure would he cut as a commissioner to regulate the public clocks of the city of New York or the city of Albany? With all his knowledge of law, I think it is exceedingly doubtful whether he knows the crown wheel from a center wheel, or the arbor from the pallet. I doubt whether he knows any thing whatever about clocks. Would not the common sense of the whole State or city repudiate his appointment to such a position? Is not this precisely what we do in the present position of the Board of Regents of the University? Is there a single one of them who was elected for that position in consequence of his known skill as an educator, in consequence of the attention which he had paid to the different systems of education which had been propounded by learned men? Has any one of them been distinguished, especially for his studies, in relation to the character of the human mind and the processes best fitted to carry forward the faculties from the period of youth to the period of useful age? I say there is not one of them who was so selected. These gentlemen have all been selected for their political acceptability, for their political character, as a reward for successful political action. There, sir, is the portrait of Martin Van Buren. We all know who he was, we are entirely familiar with his history. He was one of the Regents of the University; but who ever heard of him as an educator? Can you look to the records of the Board of Regents of the University, and show that he ever proposed a single measure having for its object the improvement of the system of education in the State or that he did any act whatever for its promotion? And is it not so with nearly all of them? If this theory is a good one, that education should be committed to one body, that it should not be confided to two discordant and very possibly belligerent bodies, then the proposition of the Committee on Education is a correct one. If it is desirable that the men who shall administer our educational interests shall be men who have studied the whole question and who shall be prepared to do their work in the best possible manner, then, the theory of the Committee on Education is a correct one. They propose to refer it to a superintendent who shall be at the head of the whole educational interests of the State, who shall superintend the elementary education, and the completed education of the people also. It is proposed that he shall be aided and advised by a board of men who have

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devoted their whole lives to the subject of education, to the presidents and professors of our colleges, and the most able and eminent writers upon the subject; those who have given perfect evidence of their ability to be useful. Is not this the common sense of the matter? Does not this idea commend itself to the common sense of the farmers, the mechanics, the merchants, the laboring men of the State of New York? We are told by the gentleman from Erie [Mr. Verplanck] that the expense of this board will be very great. If the amendment of the gentleman from Onondaga [Mr. Alvord] is adopted, as I most sincerely hope it will be, that argument falls to the ground. But suppose it was a greater expense—can the State of New York pay its money for any better purpose than preparing the minds of its youth in such a way as to enable them to become useful and ornamental members of society? We are engaged in a mighty struggle here in the State of New York. There is wealth in the bowels of the earth beyond all calculation. There are thousands of horse powers running down our rivers to waste. There are the elements of wealth strewn along over the whole surface of the State, and the reason why that wealth cannot be made available for the purposes of the people of this State is, that there is not a sufficient amount of human physical force in the State to do it. We are lacking labor. Now, what is the great problem that the people of this State have to solve? It is to substitute mind and intellect for muscular labor. It is, by the force of genius, to bring the great forces of nature into the service of man; to command the wind, the water, and the steam, and every other available force of nature, to do the work which we are not strong-handed enough to perform, so that we may avail ourselves of these great sources of wealth. Let me give a single illustration of what it is in the power of genius to do toward making this substitution. In 1852 I was one of the board of judges of the State Agricultural Society who were required to investigate the qualities and capacities of mowing machines, at Geneva. We spent a whole fortnight in the investigation of those machines, and applied all the tests that it was in our power to apply, in order to ascertain which of them was the best for the farmers of the State of New York to adopt. The prize which we offered was $500; and there was a little man there from Illinois who I believe had never before seen $500 together in his life. He was sickly, but yet his mind was full of genius, and at the conclusion of our experiments we found that his machine was the very best one of them all, and the prize was awarded to him, for this machine would do the work of ten men with ease. Six years after that I was appointed a member of the board of judges of the National Agricultural Society, which convened at Syracuse for a similar purpose; and while there I was, of course, surrounded by all the inventors of this kind of machinery in the United States. One day at the dinner table, a gentleman near me, who was a manufacturer of mowing machines, remarked to me, "I have paid this year $120,000 to the widow of this man who obtained a premium"—a man who at that time had never seen $500 in his life, and now, six years afterward, his widow was paid by one man $120,000 in a single year, simply for the right of manufacturing that machine, as a royalty fee. Another gentleman sitting within the hearing of his voice, said, "You have exceeded me, for I have paid her $75,000 this year." Another said that he had paid her $60,000, another $40,000, another $20,000, and four or five said they had paid her from $10,000 to $15,000 in that one year. This vast sum of money which was paid to the widow of this inventor in one year is simply an indication of the wants of the people of this State—they want something which shall substitute genius for labor. There are a thousand instances that might be mentioned in the State, where the brains of men have been absolutely coined into gold, because they have been enabled to meet the wants of the people of this State. The great problem before us is to spread this information broadcast, to enable all the pupils of our common schools to become thoroughly familiar with the fundamental laws of mechanics, of chemistry, of physiology and of all those sciences which will enable them thus to subjugate the great forces of nature to the service of man, and which will enable us to reap the vast harvests of wealth which lie in the bosom of our country ready for the first ingenious person who shall come to evoke them. If by the substitution of a better system of education, we are enabled to perform all this, if we are enabled to multiply these miracles, surely no price which would be paid, even if the price were greater, would be begrudged by the people of this State, when it was repaid in such an enormous proportion as that which I have stated. In that invention men were released from the odious drudgery of swinging the scythe. From that time, after that discovery, men were able, instead of by painful labor, mowing one acre a day—a single man, or, as was the case during the war, a single daughter of a family, would sit on an easy chair upon a mowing machine and perform more labor by the aid of a pair of horses than ten men could have done without it. This argument of expense is one that should be entirely ignored, in regard to this matter. If we can really get a valuable consideration, if we can have a real service performed for the people of this State, the question of expense amounts to nothing whatever. It has been said, and said very truly, by the gentleman from Fulton [Mr. Smith], that the Board of Regents have performed some very valuable services to the State. It is no part of the intention of the Committee on Education in the report which they have made, to undervalue the services of those distinguished gentlemen. The gentleman has very truly said that they are the guardians of the Geological Hall; that they have built up that institution; that it is now exceedingly honorable to the State, exceedingly useful to all its citizens; that it is frequently visited not only by strangers from abroad but by our fellow-citizens from the different States of this country and that it has elicited the admiration of them all. This is undoubtedly a very glorious jewel in the diadem of the regents. And do the Committee on Education propose to withdraw that jewel from their crown?

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They have no such intention. This article which has been proposed does not touch their functions in the slightest degree in relation to the Geological Hall. We have been told, too, and told with the most perfect truth, that the State is greatly indebted to the Regents of the University for the growth and for the real excellence of our State library. I have, as an individual, been greatly benefited by that library. I can testify that I have rarely engaged in the study of any topic of inquiry without I have found a most valuable assistance from the volumes that have been collected there. I feel personally thankful for the pains and the effort which the regents have made in that direction. Do we ask the people—do we ask the Legislature representing their authority to take away any of the power of the regents in relation to the State Library? Not in the slightest degree. They leave all the powers they have now intact in their hands. We are told that they have been made the medium of scientific exchanges between this country and Europe. The article proposed does not interfere with their functions in that respect at all. What then does the committee propose to do? The article in question simply proposes to relieve them of their functions in relation to education, and that is all. Now, sir, when it is alleged that the Board of Regents have really contributed to increase the value of education of the children of this State, it is simply asserting what has no foundation in fact.

Mr. VERPLANCK—Will the gentleman from Columbia [Mr. Gould] allow me to ask him a question? The gentleman says that if the management of academies and colleges was taken away from the Board of Regents of the University, they would still have a right to be called the Board of Regents of the University. Will the gentleman allow me to ask him whether, if the powers proposed were conferred upon this new board, the Regents of the University would consent to hold their office merely for the purpose of taking charge of the State Library and the museum?

Mr. GOULD—Why should they not? Would it be any greater misnomer to call them the Regents of the University, when they have the care and custody of the museum and State library, than it is to call them so now, when they have not the custody of a single college or university in the State of New York? I, for my part, fail to see it. The gentleman asked me the question whether they might not still go on with their functions in relation to those matters, if this article should pass. I say, most certainly. I believe it. I have no shadow of doubt of it. The statutes which confer this power upon them would remain intact, and would not be altered by the slightest fraction, if the article in question were adopted. I was speaking in regard to the function of the Regents of the University, in relation to education. We are told that they have the right of visitation of colleges, and they visit them in their examinations, and that they encourage them. Well, sir, so do I visit colleges at their commencements, and, sir, I do just as much good to the colleges as the Regents of the University do. I go there and hear the exercises, and the Regents of the University go there and do no more. They do not offer a single suggestion; they do not exercise authority in the slightest degree. I have frequently asked the presidents of colleges if the Regents of the University were accustomed to visit their institutions, and I have always been told that they hardly knew there was such a body as Regents of the University in existence, and that they rarely visit them. The gentleman from Albany [Mr. Harris] who is on the executive committee of two colleges, when I asked him if the Regents of the University had ever visited his colleges, said that he never recollected to have seen one of them there during the whole course of his life. The Board of Regents, with reference to education, is simply a farce, nothing else, and a broad farce at that. It is said that they get together the University Convocation. Really is that a matter of such great importance? Is it so exceedingly difficult to write a short circular inviting the friends of education to meet in the city of Albany? I do not know that the Board of Regents have ever done any thing beyond this. The convocation is accommodated in the Agricultural Hall and its members get together every year and discuss the interest of education in the State of New York: but does the gentleman seriously mean to contend that it would not be precisely as easy for the board that is created by this article of the report of the Committee on Education to issue a circular of that kind? If they are men specially adapted to the work is it not reasonable to suppose that they might draw a better circular than the one that is drawn by gentlemen who have never given any attention to the subject at all? The fact is that all the educational functions of the Regents of the University are performed by the secretary alone. I trust, sir, I have not the slightest doubt that that most estimable gentleman connected with the Board of Regents as its secretary, whose face is known in all the academies of New York, would still be continued in the service of the State; and I presume, without a shadow of doubt, he will be incorporated as one of the members of the new board, and be continued in that position during the period of his usefulness in life. It has been urged by the gentleman from Fulton [Mr. Smith] that if the article proposed is adopted, it will necessarily become in the end a political board. For my part, I do not see how it will be so any more than the Board of Regents is a political board. There is not one of these gentlemen, as I before stated, who has been elected because he is an educator — because he has studied this matter of education — but simply because he is a successful politician, because he is a man whom the party in power delights to honor. Sir, even my friend from Richmond [Mr. Curtis] with his eminent worth and capacity for that position, is no exception to the rule. Does any man suppose that the Legislature that elected him elected him merely because he was a literary man and had made himself a distinguished light in the firmament of literature? If he had been a democrat all that would have gone for nothing. It was because he was a politician that he was elected a Regent of the University, and not be-

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cause he was a literary man. I recollect when the Board of Regents was made up wholly of one political party. Until 1847 I believe there was not a single member of the Board of Regents who did not belong to one political party, but in that year when Robert G. Rankin and Dr. Luckey were elected they were the only whig members of the whole board; and the time has been and the time may come again when the Board of Regents will be an active political organization. There is nothing whatever to forbid it. I am happy to say that for the last few years there has been an entire absence of any thing like political action on the part of this board, but it is quite possible that the seven men whom this article proposes to invest with the powers of education in the State of New York will become partisan. For my part, I have very little fear that the board thus proposed will be liable to the criticism that the gentleman from Fulton [Mr. Smith] makes upon this score. If they are really selected because their hearts are fired with a glow of interest for the cause of education in this State, they will not be likely to be very much infused with political feeling.

Mr. VERPLANCK—I infer from the remarks of the gentleman that he would have persons appointed to this board selected from educators.

Mr. GOULD—Certainly I would.

Mr. VERPLANCK—Does the gentleman believe that the great educational interest of the State and the moneyed interests connected therewith would be safely intrusted to such a board?

Mr. GOULD—Unquestionably they would.

Mr. VERPLANCK—Then I beg to differ entirely with the gentleman in his views upon that point.

Mr. GOULD—What have they to do with the moneyed interests? Is it possible that the great educators of New York will not be able to distribute forty thousand dollars without cheating? That is all that the Regents of the University have had to do. Suppose that men like Doctor Anderson, or like President White, or Doctor Woolworth, the present secretary of the Board of Regents, and men of that character, were placed in a board of education, does the gentleman from Erie suppose that that forty thousand dollars would be in danger—that they would put it in their pockets and leave the State, or that they would be so utterly ignorant of keeping accounts that it would not be properly taken care of?

Mr. VERPLANCK—The gentleman from Columbia [Mr. Gould] misunderstands me. The board have the care of the interest of the State in an educational point of view, and I say that men who are mere educators have not the practical knowledge of affairs of the world to manage properly the business of our institutions of learning.

Mr. GOULD—How much practical judgment does it require? Here are a certain number of pupils and a certain amount of income. Certainly could not practical educators divide the amount and distribute it among a number of persons to whom it was to be distributed. And would they not be able to find a true divisor? I have a better opinion of the educators of the State of New York than to believe that they would fail in a simple matter like this. When they have accomplished that great feat of arithmetic, all they have to do is to count up the money and make it a present to those who are to receive it. I cannot have the slightest fear but that these forty thousand dollars will be honestly distributed. There is a single other topic which has been suggested and which I desire to refer to, and that is the statement that there is a jealousy of the common schools against the academies. I cannot for myself understand why this should be alleged. Is it intended to be insinuated that the Committee on Education have a jealousy of academies and colleges, that they desire to sacrifice the higher interests of learning in behalf of common schools.

Mr. SMITH—In my remarks upon that point I had no allusion whatever to the Committee on Education, and I do not suppose, for a moment, that they have any such desire. I had reference to this flood of petitions which has come in upon us, and which, I suppose, had their origin in a feeling of that kind.

Mr. GOULD—If that were the case I cannot tell what the secret motives of the petitioners were. In reading through these petitions, it did seem to me, and my common sense told me so, that the petitioners had got hold of the root of this matter, and that there really was a desire to have the children of the State educated in accordance with some uniform and definite plan. That is all that I saw in the petitions. I do not know who were the secret movers of that petition. I saw it was signed by gentlemen every one of whom I know, and every one of whom has the confidence of the people of this State. As they were all gentlemen who are well qualified to speak with authority, I did not question its character.

Mr. SMITH—There has this moment been placed in my hands a memorial, signed by A. G. Johnson, and others, in favor of abolishing the Board of Regents. In this memorial I find this statement:

"There is an antagonism between private and public schools. In all the villages in which academies have been incorporated and established, it has been difficult, and, for the most part, impossible to get a vote in the district school meetings to raise the money necessary to build sufficient and decent school-houses for the accommodation of children whose parents are not able to pay their tuition in the academy."

This indicates the jealousy against academies to which I alluded, and which I suppose originated these numerous petitions.

Mr. GOULD—Very well. The gentleman has read an extract from a document which I have not seen; but it says not that the friends of common schools are jealous of academies, but that academies are jealous of common schools.

Mr. ALVORD—The gentleman is mistaken. This is a document which emanates from professed friends of the common schools.

Mr. GOULD—I understood the contrary.

Mr. ALVORD—The gentleman is mistaken. He had better begin his work over.

Mr. GOULD—No, I do not want to begin it over. I say that all this jealousy between acad-

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emies and common schools is because they are not sufficiently acquainted with each other. If you put both under a single head, where they will be compelled to sleep in the same bed, I have no doubt that that will be likely to take away the antagonism which it is said exists. And that is what we propose by this report of the Committee on Education. That is all I have to say.

Mr. ALVORD—I move to amend the clause by striking out the words "and the compensation," in the sixteenth line, and inserting after the word "members." in the same line, the words, "who shall serve without salary or compensation of any kind," so that the clause shall read, "the term of office of the members, who shall serve without salary or compensation of any kind, shall be prescribed by law.

Mr. GOULD—Does the gentleman propose to strike out the compensation of the superintendent of common schools?

Mr. ALVORD—No, sir; the tenth line proposes that four members of the board of education shall be elected or appointed as shall be provided by law, and that their term of office and compensation shall be prescribed by law. We have already prescribed the term of office of the superintendent, and therefore this amendment can have no relation to him.

Mr. GOULD—I have no objection whatever to the proposed amendment.

Mr. ALVORD—We have prohibited the Comptroller and the Secretary of State from taking any fee or reward, except their salaries.

Mr. E. A. BROWN—It has not been my purpose, and is not my purpose now, to discuss to any considerable extent, the subject under consideration in any of its bearings. I have never been able fully to understand, during the sessions of this Convention, why it was that these petitions were sent in here from time to time, asking this body to abolish the Board of Regents of the University—a board which, I believe, has existed about as long as the State government has existed and during nearly the whole existence of every Constitution of this State. It has, however, from time to time, leaked out that some influence, somewhere, as I have understood, having its locality about the city of Albany, has reached forth in various ways to every part of the State, —has sent out these printed petitions which have been signed and sent in here asking for the abolition of this board. The only petition of the kind that has come from my county, has come from a town situated apart, mainly, from the rest of the county, where I suppose a commissioner of common schools has visited, and perhaps been requested to secure the names to that petition, and then send it here. Now, sir, when this report was made, it seemed to be the object to get rid of this Board of Regents. We are told that the purpose of getting rid of the board is, that, there may be a unity in the system of education in this State. I suppose it means that the same board, which has charge of the common schools of this State shall also have charge of the academies of the State, and the colleges and the universities of the State—that there shall be that unity of purpose and consistency of action pervading the whole system of education in the State, from the lowest to the highest, which shall eventuate in the greatest good to the people and to the cause of education everywhere. Now, sir, it has leaked out, it seems to me, in the course of this discussion that there is a certain antagonism between the authority which it deemed prudent and proper to exercise influence and control over the common schools of the State, and the authority which shall have influence and control over the academies, colleges and universities of the State; and the document which has been referred to by the gentleman from Fulton [Mr. Smith] and the gentleman from Onondaga [Mr. Alvord] and which I hold in my hand, has these words to which I specially call the attention of the Convention.

Mr. ALVORD—Where does the gentleman read from?

Mr. E. A. BROWN—From the ninth page.

Mr. ALVORD—I trust the gentleman will read the whole of it.

Mr. E. A. BROWN—"The colleges and academies are generally and almost exclusively denominational schools, patronized and supported as well as founded, by the various religious denominations. The public money appropriated to them is, therefore, indirectly used in propagating religious tenets, or, at any rate, in aid of competing sects.

"2. All the colleges and academies are essentially private schools. They are, indeed, incorporations, and are in one sense public; but they are as completely private as would be a school set up and supported by a single person. There is an antagonism between private and public schools. In all the villages in which academies have been incorporated and established, it has been difficult and for the most part impossible, to get a vote in the district school meetings to raise the money necessary to build sufficient and decent school-houses, for the accommodation of children whose parents were not able to pay their tuition in the academy."

I will not take up the time of this Convention in reading further. I do not know how much more there may be of this character. I do not know how much more rich and deep this document may be in the explanation of the purposes which are sought to be accomplished by adopting the report of the Committee on Education now under consideration; but, sir, if this sets forth faithfully and truly the purposes in view, it is sought to place under the control of a single individual, or a single authority, the public schools, all the common schools of the State, and also the academies and colleges of the State; that the common schools may be encouraged and supported at the expense of the State, and for the purpose of limiting the distribution of funds to the academies and colleges and universities of the State. Is it true, sir, that in the village neighborhood where there is an academy, it follows that the people are not disposed to sustain their common schools? There may be such instances; there may be such localities; but, sir, it is not generally true and it is not necessarily true, by any means, but on the contrary, I believe the contrary to be the fact. Many times this state of facts exists in

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villages or localities where academies are located, graduated schools and union schools are established and carried forward and supported largely by the public in those same localities. Now, sir, I do not know but the argument is good, that all these schools of every character, common schools, academies, colleges and universities, should be under the control of a State board of seven persons, or some other number of persons, but it strikes me, sir, that the individual who is placed at the head of the common schools of the State, if he will devote himself to the business of his office, and the discharge of its great and important duties which he will be called upon to discharge in that responsible position, he will have as much to do, and sufficient labor for his hands and head as any one man in the State of New York may reasonably be called upon to perform. And, sir, when he has discharged these duties, it will be well for the people in this State that another board, having no antagonistic feelings in regard to common schools, having no interest hostile to them, should be organized to carry forward the system that takes up the scholar when he leaves the common school, and leads him on to the academy, and takes up the other scholar when he leaves the academy and puts him through the college and university, so that the general interest of the State, as connected with the education of the people, may be largely promoted by having another and higher and more enlarged board to take charge of the higher educational system instead of having them under one individual, who has control simply of the common schools of the State; and it is to the end that our higher institutions of learning in the State shall never be deprived of the benefit of the existing board which has to some extent control over them, and which is proposed by the article reported by the committee to be done away with, that I shall vote against the article.

Mr. ALVORD—I am very glad that the attention of the committee has been called to this document, and I desire to call its attention to it still further, and read extracts from it in connection with the remarks I shall make, because I believe that these extracts will be more powerful in their influence than any thing I could say in that direction. Gentlemen have the document before them and it will be seen, in the first place, that an attempt has been made to put upon it the brand of a Convention document, although the document has not been printed by the Convention. In the usual form, on the first page, it has the words, "State of New York, No. ——, in Convention, December 18, 1867. Reply to the communication of the Regents of the University, in answer to petition, etc., presented to this Convention." The fact in reference to this document is this, that the communication was introduced in Convention, and it was moved that it be printed. The motion to print was referred to the Committee on Printing, and the committee reported adversely to printing the document. Still it has been printed and brought in here and put on our files. I think that the Committee on Printing made a mistake in not recommending the printing of that document; for I think it sufficiently answered in the document itself to see where all the controversy in regard to this matter has originated. In the first place, without undertaking to enter into a criticism with reference to the signers of the communication, I will simply allude to the fact that the first two gentlemen whose names are signed to it are clerks in the office of the superintendent of public instruction in this State. In their opening they use these words. "The undersigned who signed and circulated the memorial and petitions, asking your honorable body to devise some mode by which the corporation known as the Regents of the University should cease to exist," etc., acknowledging that the paternity of the original memorial which was sent throughout this State was stereotyped here at Albany under their auspices for the purpose of getting up facts upon which to found the action of this Convention upon the abrogation of the Board of Regents. Here is the hostility. The gentleman from Lewis [Mr. E. A. Brown] read a portion of the second paragraph down to the word "academy." I propose to read further:

"Possessing wealth and influence enough to control the action of a majority of the voters, the patrons of the academies have opposed any liberal provision for the education of their less favored neighbors. Thousands and thousands of the children of the poor have thus been deprived of proper school facilities; a poor school-house and cheap teacher have been good enough for them. We do not believe in the propriety of encouraging, by the distribution of the public money, the continued existence of such academies as directly or indirectly obstruct the free school system. We do not believe in the policy or justice of granting more public money to an academic pupil than to a pupil in the common schools, when we know that the academic pupils are generally those whose parents are able to pay tuition. We object to discrimination against the poor, and in favor of the rich. We hold that a Christian State should make ample provision for the many before it is lavish in its provisions for the few.

"The attendance at the two hundred and more academies is about thirty-five thousand, while the public schools are attended by nearly a million. A reference to the reports of the regents will show that less than one-half of the pupils in the academies are in a true sense academic scholars, and we do not doubt that two-thirds of them are really scholars who ought to be classed as primary pupils. It is, therefore, unequal and unjust to pay more public money for educating 'primary pupils' in the academies than in the common schools.

"If the trustees and patrons of academies desire to have schools in which their children may be educated separately from the children who attend common schools, let them do so at their own expense."

And they follow all the way through with a direct argument against the higher classes of education in this State and in favor of the common school system, and endeavor to destroy at once by one fell blow, the academies and universities, which whole argument from the beginning to the end of the document puts it as an acknowl-

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edged fact that it has undertaken to create a public opinion on this subject unblushingly, and avowedly in favor of destroying the Board of Regents of the University, and, in their downfall, to pull down all the remaining institutions of learning of a higher character within the limits of this State. Now, sir, are we to lend ourselves to this controversy? Was there any necessity of it? or has there been any necessity for it in the past so far as it regards our academies and universities? So far as it regards our academies and universities they have gone on in their paths toward educating the people. They have received a very small pittance at the hands of the people of this State in the way of bounty or endowment—a very small one indeed—and they probably will not receive more than that small measure in the future of this State. Sir, there is an anxiety in our State in relation to our academical institutions. There is no greater libel than the one contained in this statement which says that our academies are "denominational." You can hardly go to an academy in any portion of this State, but what you find men of all denominations and all religions among its trustees, and they are not used for denominational purposes or for proselyting institutions for any particular form of religion. They are in that regard, as free as any institution of any name or kind within the limits of the State of New York. They are founded, protected and officered without any regard whatever to class religion, and I trust that this attempt upon the part of these men, that is avowed in this Convention, to place in the organic law of the State an inflexible, crystalized system never to be changed, will be frowned down by this committee. Leave this to the Legislature of the State, as it has been in the past, to determine as the exigencies shall from time to time require. Leave it where it can be molded from time to time at the hands of the representatives of the great body of the people who make the laws; but do not place it in here merely to secure a petty victory—a petty triumph of these parties against the interests of the State and under the law, and let that victory be crystalized in this Constitution through our mistaken views.

Mr. HALE—I wish to call the attention of the Convention to the law which regulates the corporation known as the Board of Regents. I think my friend from Richmond [Mr. Curtis] made a mistake in what he said in reference to the powers of the board. He remarked that in a conversation with the president of Columbia College—

Mr. CURTIS—The gentleman [Mr. Hale] is mistaken. I said a gentleman occupying a high position in Columbia College.

Mr. HALE—I beg the gentleman's pardon. I misunderstood him. He stated that in a conversation with a gentleman high in position in Columbia College, when he asked that gentleman whether if he should call there as a member of the Board of Regents of the University, claiming his right as a regent to enter that college he would be admitted, and that the gentleman replied, substantially, that he would not, that he would be glad to receive the gentleman from Richmond as a matter of courtesy, but would not receive him under a claim of right to visit as a member of the Board of Regents. Now, I wish to call the attention of the members of this committee to the law under which the Board of Regents are authorized to act. By the law

"The regents are authorized and required, by themselves or their committees, to visit and inspect all the colleges and academies in this State, examine into the condition and system of education and discipline therein, and make an annual report of the same to the Legislature."

The board is "authorized and required" to visit Columbia amongst other colleges. If this gentleman, therefore, high in position in Columbia College, should refuse to admit the gentleman from Richmond as a member of the Board of Regents, he would show that he was eminently unfit for the high position he occupied, by taking the attitude of a violator of the law of the State. Again, the law provides that

"The Regents of the University of the State of New York, and any committee thereof, in the discharge of any duty required by law, or by resolution of the Senate or Assembly, may require any proof or information relating thereto to be verified by oath, and shall for such purposes (and no other) have the powers now by law vested in any committee of either house authorized to send for persons and papers."

These two sections do give the Board of Regents something more than a mere theoretical and nominal right of visitation. They have the law of the State to back them, and they have the power to put that law in force. The first memorials which were circulated through the State and sent in here in the form of a petition speak of the reports of academies and colleges to the Board of Regents as "voluntary reports," as if it were a mere matter of kindness on their part to send in their reports to the Board of Regents. But what does the law say in that regard?

"Every college and academy that shall become subject to the visitation of the regents shall make such returns and reports to the regents in relation to the state and disposition of its property and funds, the number and ages of its pupils, and its system of instruction and discipline, as the regents shall from time to time require.

"The regents shall prescribe the forms of all returns which they shall require from colleges and other seminaries of learning, subject to their visitation, and may direct such forms and such instructions as from time to time shall be given by them as visitors to be printed by the State printer.

"Every academy shall make up its annual report for said academic year and transmit the same to the regents on or before the first day of November in each year."

Still, according to these memorials, this is a mere voluntary matter on the part of the officers of academies and colleges to send in their reports although the law strictly requires it, and they fix a day by which the report shall be made. And, again, to show that these trustees have more power than that, the law further provides that, "In case the trustees of any college shall leave the office of president of the college, or the trustees of any academy shall leave the

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office of principal of the academy vacant, for the space of one year, the regents shall fill up such vacancy, unless a reasonable cause shall be assigned for such delay to their satisfaction," so that they have the power, in case there may be neglect on the part of the trustees of an academy or college to fill a vacancy of the president of an institution, to fill it themselves. This is in addition to the other duties that devolve upon them. I merely refer to this provision of the law to show that the duties of these regents are not entirely nominal, and that the reports made to them by the trustees of academies are not entirely voluntary. It is true that the only action that the regents can take upon these reports is to make their own report to the Legislature, based upon the reports made to them. It is so in regard to a committee appointed by the Legislature, with power to send for persons and papers. They take the testimony and ascertain the facts, but when the facts are ascertained they must report to the Legislature for their action.

Mr. KRUM—I would like to inquire of the gentleman whether this law applies to all the colleges and academies in the State, or only those which are chartered by the Regents of the University?

Mr. HALE—I think it applies to all. The language is, "the regents are authorized and required, by themselves or their committees, to visit and inspect all the colleges and academies in this State, examine into the condition and state of education and discipline therein, and make annual report of the same to the Legislature."

Mr. KRUM—Does not that refer only to those colleges which participate in the funds, that these only are to be subject to this law?

Mr. HALE—I can only refer to the statute, which says, "all colleges and academies in this State." The gentleman can put his own construction upon it. I think it means what it says.

Mr. CURTIS—The discussion which has arisen upon this section of the report of the Committee on Education, except that part which I had the honor to contribute to it, seems to me to be of that character known as able and adroit. It seems to me that it might properly be described as "cuttle-fish" discussion. The gentlemen who have opposed the section which the committee have reported, have very sedulously and harmoniously sought to confuse the essential point of discussion. As for the document to which the gentleman from Onondaga [Mr. Alvord] refers, I have myself now seen it for the first time. It was laid on my table this evening. It is a document of which the Committee on Education have no knowledge whatever—a document of which this committee and this Convention have no knowledge whatever. It may contain, so far as I am aware, the most venomous hostility to the various institutions of the State of New York. But it does not seem to me to be now before this Convention. My object, and the object of the committee which was appointed by this Convention to take the subject of education into consideration, was the very simple and single object which, in my remarks of this morning, I attributed, and I believe with perfect truth and propriety, to the gentlemen who compose the Board of Regents; that object was simply to devise the best practical system of education for the State of New York. That was all. The attempt ingeniously made by the gentleman from Onondaga [Mr. Alvord], and repeated by the gentleman from Albany [Mr. A. J. Parker], who spoke before we adjourned this morning, seems to me ingenious, but I trust will prove to be abortive. The question remains. The question is still unchanged—what is the best system of educational management for the State of New York? Now, sir, in the remarks which I had the honor to submit to the committee this morning, I stated, as frankly and as fully and as truly as I could, the duties of the Board of Regents of the University. I said that it was the most ancient institution in the State; that its roll of membership comprised a list of the most illustrious names known to our history. I mentioned Governor Clinton, General Schuyler, John Jay, James Kent, Washington Irving among other names which had adorned that board. I said that these gentlemen served the State without salary; that their services were noiseless, that their duties, such as they were, had, so far as I knew, been faithfully performed. There was not a word, sir, except possibly the manner in which I represented the undoubted public sentiment in regard to the regents—a public sentiment which neither the gentleman from Onondaga [Mr. Alvord] nor from Albany [Mr. A. J. Parker] nor from Erie [Mr. Verplanck] will deny to exist. Except that part of my speech there was nothing that by the remotest implication might be supposed to suggest so much as a smile in the direction of the Board of Regents. But I said I thought the duties of the board might be better performed in another way. And, sir, what has been the reply? Why, Mr. Chairman, the reply is to be summed up in two propositions. The first is that this is an old institution; and so far as the character of the members is concerned, it is a spotless institution; and the second is that they have performed the duties, such as they were, to the acceptance of the people. Mr. Chairman, I believe that there is no man on this floor who is more sensible than I am to the charm of venerable tradition. If this, as the gentleman from Onondaga [Mr. Alvord] would seem to intimate, were a poetic body, if our business were to prostrate ourselves at the shrine of ancient romance, to drape ourselves in mourning robes and abandon ourselves to the pensive images of the past, I trust, sir, that I could then, but surely not otherwise, aspire to be a leader in this Convention and to hasten in the very fore front of my colleagues to profess my interest and my sympathy in whatever is romantic and old. But, sir, the gentleman from Onondaga will admit that age is not always desirable. It depends upon the circumstances whether it is or not. In wine, I have heard, that age is good. In bread and eggs, I suppose, it may be doubtful whether it be so desirable a quality. [Laughter]. Sir, age is venerable. When it is venerable, age, we are told, gives wisdom; but age, whether we are told so or not, does

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not give vigor. Now, Mr. Chairman, the point which my friend from Essex [Mr. Hale], the point which the gentleman from Albany [Mr. A. J. Parker], and the point which the gentleman from Erie [Mr. Verplanck], should have made in this discussion was this, that, because of the age of the Board of Regents, therefore the duties which devolve upon it, in the economy of the education of this State, could be more adequately and faithfully performed as a separate board than in the manner which we have recommended to the Convention. On this point I have yet heard nothing urged, and yet, until this point is sustained, until the relation between the antiquity of this board and the discharge of its duties is clearly indicated, I submit to you that the argument of age is necessarily inapplicable. Now, then, we confront squarely the question. I have not denied, so far as the second point I have mentioned is concerned, that the Board of Regents, laboring under the paralysis growing out of the conflict of laws imposed upon them, have done such duties as they have had to do, well. Sir, there is no man in this State who will go before me in paying the homage of respect to the services of the secretary of the Board of Regents, and his assistant. What I say now is what I said this morning, that all the Board of Regents does through its officers—the secretary and his assistant—could be better done for the interests of education by one board which was charged with a general care of all educational matters which are under the State control; and I beg gentlemen of this committee not to be diverted any further from the question, which is this: Shall there be in the State of New York two boards of education? Is there any good reason why this State should have two boards of education, one having charge of what is called the higher education of the State, and the other of what is supposed, by implication, and the circumcumstances must therefore be supposed to be, in the views of gentlemen who oppose us, the lower education? Sir, I do not see it. I do not believe that any gentleman, who has spoken on this floor has shown us the necessity for two boards; nor do I believe that any man in this State can show it. The cause of education is a unit. Any system of education that can be devised—what is it? It is Jacob's ladder. It is a constantly ascending grade of celestial steps. There is no middle point on that ladder, above which all is higher, and below all is lower; for he who plants his foot upon the first round is already in the heavenly way. The gentlemen who oppose this section deny that there is any essential hostility between the two systems of education. I deny it also. I deny it from the nature of the case, as I have already done. I deny it further, upon the authority of the Board of Regents in the rejoinder which they have already laid upon our tables. They did not acknowledge, and I do not acknowledge, and no reflecting man in this State acknowledges that there is any essential hostility between the system of common schools and the system of colleges and academies; and because they are essentially one—the committee have charged me to report that, henceforth the State of New York shall care for this interest in a single department. Mr. Chairman, the constitution of that department is a matter of debate. For my part, I am very sure of this, that, if we are to have a department of education in this State that shall be adequate to its duty, we must not compose it of gentlemen elected for life, and removable only by the vote of the Legislature, if we would have the authorities of this State which have charge of the interests of education a vast, and energizing influence, it must come fresh from the people; it must come with all the lights which the constant advance of the science of education developes, and no science is so progressive as this. I have no object, and I am sure that the committee have had no object to create a new board of officers in order to bleed the treasury of the State. But I am sure that every dollar this State, or any State spends in education saves fifty or a hundred dollars spent in the punishment of crime. Therefore, I propose and the committee authorized me to propose no unnecessary or unwise expense to the State.

Mr. ALVORD—The gentleman makes use of the word "unit"; do I understand him to go to the length that the State ought to make education of all kinds free?

Mr. CURTIS—Certainly not.

Mr. ALVORD—Then I cannot understand how they are to be a unit.

Mr. CURTIS—It is a unit in so far as the subject itself is concerned.

Mr. ALVORD—My idea is that the State should take care of the education of the State in a double view, one as a free institution and the other, as being the higher sphere of education, to be remunerated by the patrons, and that these two systems should be under separate and distinct laws.

Mr. CURTIS—The essential thing is the same. The essential cause of education is always the same, that is the important point we are to bear in mind. I am not now expressing all the views I entertain as an individual in regard to this matter. I do not, for instance, as an individual, see any necessity for such a relation to the State as the colleges now have. Admitting the system to be desirable, all I wish to do is to create a single board of education, and the care which the State now exercises over these academies and colleges can be as well exercised in a single bureau, desk or department in that board as it is now in another department, which by the necessity of the existing system, and from the spirit which gentlemen have evinced in their remarks, would necessarily aggravate and exasperate each side into a hostility which the whole State would deplore. That, sir, is the simple proposition of the Committee on Education. A simple question whether we will have one board of education or two boards. Mr. Chairman, in concluding the remarks, which I had the honor to submit this morning, perhaps with an over anxiety to screen myself from any thought of personal feeling, or at least to win for my remarks the sympathy of the committee, I ventured to state that if a wreck should take place I should share the fate of my companions and go down. Sir, I could not be sorry that I made use of that expression. I am sure the Convention are very grateful to me

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for having used it, since it secured for us the extremely felicitous peroration of the speech of my friend from Albany [Mr. A. J. Parker]. But, sir, the wreck of which I spoke was not of the great cause of education in this State. No, sir, it was only of individual official relations to that cause. The responsibility which, with solemn impressiveness he charged upon me, should this section of the committee's report chance to prevail, is a responsibility which I willingly assume, for in any such wreck as that, Mr. Chairman, I should not be seen, surely, in the position which he has so graphically described; I should not be seen hastening to hang up my dripping garments, if happily I had escaped, in the temple of saving Neptune. No, sir, in the sacrifice of individual importance to a great public cause, the garments of no man seem to gods or men dripping rags, but rather shining robes, and I reply to the gentleman in the words of a later poet than him he quoted; in such a wreck:

"——if my barque sinks,
'Tis to a deeper sea."

Mr. ALVORD—I admire very much indeed, sir, the world of fancy and of theory in which the gentleman from Richmond [Mr. Curtis] sails his barque, and in which the gentleman from Columbia [Mr. Gould] also disports himself; but we are practical men in this Convention, and I trust that we look at these things in a practical way.

Mr. CURTIS—If the gentleman will allow me one remark, I would like to ask him whether he is aware that they were "practical men" who built the Great Eastern?

Mr. ALVORD—I think they were not. I think they made a mistake.

Mr. CURTIS—They called themselves so, Mr. Chairman.

Mr. ALVORD—I think the probabilities are that the men who built the Great Eastern were educated in the same school as my friend from Richmond and my friend from Columbia, and they made a failure of that enterprise, as these gentlemen will make a failure of this scheme even if they succeed in passing it. Now if there had been no petitions upon this subject brought before this Convention there would not have been any necessity for this discussion, and although the members of this committee may have acted in good faith, and may have recommended what they deemed for the best interests of the State, yet we have a right, in judging what the result of the adoption of this scheme would be, to take into consideration the motive which lies at the bottom, in the minds of those who have undertaken to create public opinion on the subject, and that motive is a deadly hostility against the academies and colleges of this State, and nothing else. These petitions show the animus at the bottom of the whole movement and what these men intend to do in this particular if they succeed here. I will now read a little further from this document, to show what these men say in this regard.

Mr. MERRITT—If the gentleman will allow me, I wish to ask him whether the proposed appropriation by the State is not already contained in the first section, and whether the communication referred to is not aimed at the State allowance of the literature fund for the benefit of the academies, and if so whether it is pertinent to the point under consideration? We have already passed the section providing that this literature fund should be set apart for the benefit of academies as heretofore.

Mr. ALVORD—I should like to know where?

Mr. MERRITT—In the first section.

Mr. ALVORD—I should like to see it. It only says: "The capital of the common school fund the capital of the literature fund, the capital of the college land scrip fund, and the capital of the Cornell endowment fund, as it shall be paid into the treasury, shall be, respectively, preserved inviolate." I understand all that, sir, but I wish to go on a little further, and I think I am in the right direction.

"In our opinion, there is not an academy in the State, situated in a village capable of supporting it, which would not be more useful, as well as more prosperous as a high school, belonging to and controlled by the public authorities. The policy of keeping up two competing sets of schools may be questioned. There is, on the other hand, hardly a question that the trustees of nearly all the academies, and their patrons, would have sustained better schools, and at less expense, if they had contributed their money, their labor, and their intelligence, to the improvement of the public schools. It cannot be doubted that a high school, the property of the district in which it is situated, relying upon the property of the district for its support, is more likely to be prosperous, useful, and permanent, than a private institution, dependent for its existence upon the contributions of its owners and the tuition of its pupils."

Now, sir, what is the whole tendency of that matter? It is to do what the gentleman from Richmond says he does not desire to do. That gentleman says he does not desire to make it a fundamental law of this State, that there shall be no institution having a patronage outside of the State, but he is in favor of it by advocating these two classes of educational institutions, the one supported by the State free, and the other supported by private contributions; whereas these gentlemen upon whose petitions is undertaken to be based the action of this Convention, avow their intention to do away with any such distinction, and to compel every academy of this State to bow down to the position of a free institution, and then to compel every one of the patrons to patronise such institutions, or else go out of the State for the education of their children. That is the result undertaken to be brought about here on the part of these men who have got the common school system so strongly upon their brains—a system well enough in itself, sir, always having my support in the Legislature, for whenever any locality desired that they should have a free school and do away with the rate bill, my voice, both in response to my name, when it was called, and upon the floor of the house, was always heard in favor of it, and I had the honor many years ago to introduce into the Legislature of this State, prematurely as it seemed, the idea of having all our common schools free. I have always favored

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the system and I would willingly tax myself in the matter of education deeper and longer than in any other direction, and I believe that the people of the State generally would submit to taxation in that direction far more cheerfully than in any other. I believe that education should be free as the air we breathe or the water we drink, but sir, I do not believe in compelling every institution of learning in this State to bow down to this one idea, by putting it under the operation of the one board of control in this State. The result if we do this will necessarily be that very many of those who should be educated within the limits of this State will be driven to other States for the purpose of getting an education. Now, in reference to the question of these institutions being all under one supreme control, I ask the gentleman [Mr. Curtis], to look around and tell me where, with a single exception of the State of Michigan, there are any institutions of a high order, that are under the domination of the State. It is true that as far as regards Yale College the Governor of the State is *ex officio*, one of the trustees of the corporation, but no other or further influence over that institution is given to the State.

Mr. HALE—Will the gentleman give way while I remind him just here that in the State of Michigan to which he refers, the common schools are not under control of the same board with the university. There is a Board of Regents there, and also a board of education.

Mr. ALVORD—I was aware of that fact, sir, and I was about to state it. They have two separate boards in the State of Michigan as well as in this State. Harvard University has recently divested itself of all connection with the State of Massachusetts, and stands now upon its own foundation. These two institutions, Yale and Harvard, have been brought up here as institutions, glorious, far beyond any of the institutions of this State; but gentlemen have failed to remember that long before this State began to be cleared at all, while it was still a howling wilderness, the people who planted themselves upon the New England shore brought with them education and the idea of its importance. They believed that education lay at the foundation of a republican government, and they went early to work for the purpose of founding institutions of learning. Yale College was founded in 1701 and Harvard forty or fifty years before that time; and ever since there has been thrown into the coffers of those institutions, the redundant property of the men of New England, who have looked to the furtherance of the cause of education as the best means of benefiting their country. And let me tell the gentleman from Richmond in this connection, that if those institutions of the east had originated in more modern times, in the feeble way that our institutions of this State have originated, and have undertaken to get along, they would not yet have reached the high and prosperous positions that they now occupy. It is their antiquity that has given them this high position, this pre-eminence among the educational institutions of this country. Now, so far forth as regards the question of antiquity, in connection with this Board of Regents, the only thing we have to say is, that they had their origin over eighty years ago, and that the gentleman from Richmond, while he stands up here unblushingly as the murderer of the institution, cannot find one single iota of evidence of complaint against them for any act that they have ever done, or any duty that they have omitted to do under the laws and government of this State. They have done their duty ably and well, sir, to the extent of the power that has been given them in the past and therefore I say that they are a useful institution and the laws that established them and the laws which from time to time have been passed for the purpose of giving them other powers and duties, and I think we should hesitate long before we undertake to eradicate them forever from out the government of the State. If in the judgment of the Legislature —that Legislature which created them, and as it were breathed into them the breath of life—if in the judgment of the Legislature it seems wise to continue them longer I say let them be continued, or if the Legislature think it best to abolish them, let them be abolished, but let us not here, in this Convention, in view of these petitions and the manner in which they have been gotten up, and the revelations we have here of their underlying motives, let us not undertake here to do this wicked and murderous deed.

Mr. CURTIS—At worst it is *hari-kari*, Mr. Chairman. [Laughter.]

Mr. MERRITT—On general principles I would be opposed to the amendment of the gentleman from Onondaga [Mr. Alvord]. I believe the duties which were devolved upon this board, demand, and they should have the best ability of the State, and that the State should pay for services rendered in the cause of education. But as this seems to be a compromise proposition, I hope it may be adopted.

Mr. ALVORD—I wish to say that I shall certainly vote for it, in hopes that it may be amended in that regard; but I shall vote for it even if it be not amended at all, so that it is no compromise on my part.

Mr. MERRITT—There has been a great deal said aside from the real question before us, and I believe that the essential question presented by the report of the committee has not yet been controverted. The question whether the educational interests of the State shall be committed to a single board, or whether that board shall be divided, is, I believe, the only question upon which we are now to pass. Nothing that pertains to the individual character of the regents, what they have done or what they propose to do, has any thing to do with it. So far as these petitions are concerned, they will have such weight as they may have upon the minds of delegates here. I assume that the gentleman from Onondaga [Mr. Alvord] has not been very much influenced by them or by the remonstrances that have been presented. He, like other delegates, will decide this question as, in his judgment, may be for the best interests of the State. With regard to this memorial that has been presented in favor of doing away with the allowance heretofore made to the academies, it has nothing to do with the present question, and

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all that has been said in regard to that matter I regard as the merest pettifogging; it is mere sophistry. I imagine that there is no one here who has any feeling against any individual member of the Board of Regents, or against any person connected with the department of public instruction. None here should have any such feeling. It has nothing to do with the question. Let us decide the question simply upon the merits. It is, in my judgment, best to put all these interests under the control of one department. I believe we ought to do so; I believe it would be for the best interests of the State, and for the best interests of the cause of education, and I therefore hope, sir, that this amendment will prevail, and that the motion to strike out will not prevail.

Mr. SMITH—I desire to say a few words upon the question. It seems to me that the statement of the question by the chairman of the Committee on Education involves a fallacy which is well calculated to mislead, and which it seems has produced its effect upon my friend from St. Lawrence [Mr. Merritt] who has just taken his seat. I understand the position of the question to be this: In the first place we have now a certain system which has existed in this State for eighty years. It is a creature of the Legislature. It has worked well; no complaint has been made against it. Now, the gentleman from Richmond [Mr. Curtis] proposes to change this system and constitutionalize a new one. I submit sir, that in such a case the burden of proof is on those who seek to change the system, and they are bound to show that there is a necessity for the change, and further that the system which they propose is better than the present one. The burden of proof is upon them, and not upon those who favor the present system. Now, sir, have these gentlemen shown this Convention any such thing? Have they shown that the people demand a change? Have they shown that there is any necessity for a change? Have they shown that the present system does not work well? If they have, I have not heard the arguments nor the reasons by which they have shown it. It seems to me that there is a fallacy in using the expression "two boards." In reality there are not two boards under our present system. There is but one—the Board of Regents. That board is charged generally with the interests of education in the State. It is true there is an officer called the superintendent of public instruction, who has certain duties to do, and to whose office certain functions pertain; but he really constitutes a part of the Board of Regents, being a member thereof *ex officio*. So far as the interests of education are concerned, the interests of colleges, of academies, and of common schools, in that board they act as a unit; and therefore it is wrong and mischievous to speak of them as two antagonistic boards. There is really but one board now; and the change proposed as I understand it is, to take the power over this matter entirely away from the Legislature, and constitutionalize a new board, with the superintendent of public instruction at its head. Now, says my friend from St. Lawrence [Mr. Merritt] it is all wrong to refer to this feeling on the part of the petitioners for the abolition of the Board of Regents; it is mere pettifogging. I was sorry to hear that remark; sorry because it was not very complimentary, nor very respectful to gentlemen who had taken the opposite side of the question. That is a matter of taste, however, in regard to which I will have no controversy with the gentleman; but I submit that it is legitimate to refer to that feeling in this discussion when we are called upon to make such a sweeping change in our law upon this subject. There is great wisdom in the famous remark of John Randolph of Roanoke that "change is not reform." When we are asked to make such a radical change as this, some necessity for it should be shown. It should be shown that the change is demanded by the people of the State, and that it would be an improvement upon the present system. I insist that there is force and propriety in the argument made by the gentleman from Onondaga [Mr. Alvord] notwithstanding the criticism by the gentleman from St. Lawrence [Mr. Merritt]. It is becoming perfectly evident that this raid upon the Board of Regents was originated and is urged upon this Convention in a spirit of hostility to the colleges and academies of our State; a spirit which ought not to be fostered or countenanced; and if we act in this Convention in obedience to that spirit we shall commit a grave error and be guilty of a great folly. Instead of promoting unity throughout the State in educational matters, as gentlemen say they desire to do, if we act in accordance with this feeling we shall promote discord and stimulate a feeling of antagonism between the various institutions of learning. There is no such feeling now, except on the part of those who are making war upon the academies and colleges in this attack upon the Board of Regents. Certainly there is no such feeling on the part of the Board of Regents or of the friends of colleges and academies. In the report of the board for 1867 the regents urged upon the Legislature the propriety of inaugurating a system of normal instruction in our colleges, for the purpose of educating teachers for academies, who would be qualified to educate teachers for common schools; thus making the whole system a unit, and seeking to promote the interests of common school education. Yet these memorialists come here and represent that there is an antagonistic feeling on the part of the friends of colleges and academies against the common school system. If we sanction or encourage that idea in this Convention, we help to create a most unpleasant and disastrous feeling throughout the State between different kinds of educational institutions which should be a unit. When I had the floor at the commencement of the discussion this evening, I stated that one of the Board of Regents, who has been an honored member for twenty-five years, was the first superintendent of common schools, and that the common school system was more indebted to him for its success than to any other man in the State of New York. It is for the reason, among others, that we do not wish to foster this feeling of antagonism and jealousy on the part of some who profess to be friends of the common schools, that we resist this movement to overturn the system that now exists and to inaugurate a new one. I

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ask the friends of this report why they seek to create a new system? Why would a board of seven, who are to be paid a salary and elected by a partisan Legislature, be more likely to foster and advance the interests of education in this State than the present Board of Regents who serve without pay? So far, in this discussion, I have failed to hear any reason given. Gentlemen say that education is a unit. So it is, sir. It is a unit now, and the Regents of the University are seeking to maintain it as a unit, and to foster it as a unit. Desiring to maintain its unity, we who oppose this scheme feel bound to resist the spirit of antagonism which has been developed against colleges and academies, and which seeks to overthrow them and build up common schools upon their ruins. I insist that the friends of the regents are the true friends of common schools. I repeat that the burden of proof is upon those who seek to make the change, to show some good reason for it. Why not leave this subject with the Legislature, where it has been for the last eighty years? Dare we not trust the people? If the regents have not possessed the confidence of the people, why has not the Legislature been asked to abolish the board? Who has ever heard of any complaint on the subject? I never dreamed that there was any opposition or hostility to the Board of Regents until I came here and saw these memorials, all bearing the same stamp, and emanating from the same source. If there is to be any change, let it be left to the Legislature. Let us not put the matter into the Constitution, but leave it flexible and plastic in the hands of the Legislature, to be molded and shaped in the future as the wishes of the people and the interests of education may demand.

Mr. MERRITT—I wish to state that, in using the word "pettifogging," a while ago, I did not intend it in an offensive sense. I merely intended to characterize the line of argument to which I applied it as a piece of special pleading having nothing to do with the question at issue.

Mr. GOULD—I rise merely to make a single statement which it seems to me ought to be made before this discussion closes. The gentleman from Richmond [Mr. Curtis] has very felicitously remarked that this has been on one side a "cuttle-fish argument," and it seems to me that the gentleman from Onondaga [Mr. Alvord] has, in all his remarks, endeavored to confuse the real issues, and to prevent them from being clearly intelligible to the Convention. His argument is this: Thomas W. Olcott, Dr. Armsby, and Dr. March have said, in a pamphlet which has been laid upon our tables for the first time this evening, several naughty things, and therefore, because these gentlemen have said these naughty things, the proposition of the Committee on Education should be thrown aside by this Convention! Sir, I do not see the logic of this kind of argument at all, and I simply wish to say that the petitions which have been introduced here, and the influences of these gentlemen have not been brought to bear on the Committee on Education at all. Every one of the propositions submitted to the Convention were agreed to substantially by the committee before they had any knowledge whatever of these attempts having been made by the gentlemen whose names are signed here, to procure petitions from the people of the State adverse to the Regents of the University. Therefore, sir, whatever these gentlemen say on the subject amounts to nothing here Their statements do not need any attention on the part of this Convention. The question is whether the Convention will adopt the theory and plan which has been proposed by the members of the committee, or whether they will adopt something else. The gentleman from Onondaga [Mr. Alvord] says that he is a practical man, and he prides himself upon being such. Now, sir, it seems to me that it is a practical idea when a single thing is to be done, that it should be done by a single power, It seems to me that if a painter wished to ascend to the top of a house, it would not be a practical way if he should go up to the second story on one ladder, and then jump sideways from that on to another ladder depending from the eaves, and go up the rest of the way on that. A practical man? Why, sir, the gentleman has accused me of something that I never was accused of before, that is, of being poetical in my remarks. I never wrote a line of poetry in my life. I would almost say that I never made a line of poetry. I do remember, sir, my mother telling me that when I was very small, and taking my noon-tide nap, on one occasion, she came into the room and found me laughing in my sleep, she woke me and asked me what I was laughing at, she said, I told her I had been dreaming poetry. She asked me what the poetry was, and I told her it was this:

"The apostle Paul in his epistles,
Advises all to wet their whistles."

[Laughter.] That poetry exhausted my talent in that direction, and I have never been guilty of any more poetry since.

Mr. A. J. PARKER—I wish to call attention to the first section of this report which I think is misunderstood by this Convention. It is supposed that that section provides for continuing the bounties to the academies which have been heretofore dispensed to them, but an examination of it will show that such is not the case. It provides as follows:

"The revenues of said common school fund shall be applied to the support of common schools; the revenues of said literature fund shall be applied to the support of academies, and the sum of twenty-five thousand dollars of the revenue of the United States deposit fund shall each year be appropriated to and made a part of the capital of the said common school fund."

Now the revenue of the literature fund is to continue to be applied to the support of the academies. How much is that? Only $15,000 a year. Yet the sum that has been distributed yearly to academies is $40,000 and the balance has been made up from a portion of the United States deposit fund which has heretofore, by a provision made by the Legislature, been added to the revenue of the literature fund to make up the $40,000 distributed. That is not secured to the academies in the future. There is nothing secured to them except the $15,000 the small income from what is known as the literature fund. It is an entire mistake, therefore, to sup-

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pose that this article, if adopted, will protect the academies in the bounty that has heretofore been given them, or will protect them against the hostility so plainly manifested toward them by those who are seeking to push through this article. There can be no doubt upon the subject that there is a deep-seated hostility against the colleges and academies of the State which is at the bottom of this entire movement. Portions have been read from the pamphlet that has been laid upon our tables under the semblance of a regular document of the Convention. It is not such, but it is a communication sent to this Convention, drawn by the same hand and signed by the same persons who presented the original memorial upon which this committee has acted, which memorial is just the same that has been sent in from different parts of the State.

Mr. CURTIS—Will my friend from Albany allow me one moment? He speaks of "the memorial upon which this committee has acted." I inform him and gentlemen of this committee that those memorials were first presented to the Convention and first came to the knowledge of the Committee on Education after they had given their fullest attention to the whole subject committed to them, and had in general agreed upon the sketch they would present to the Convention. Therefore it can in no sense be said that those memorials influenced the action of the committee.

Mr. A. J. PARKER—I will do the gentleman from Richmond [Mr. Curtis] the justice to say that I do not believe that he participates at all in the feeling of hostility that prompted that memorial. I am not surprised that he should attempt to get rid of its effect here; but, Mr. Chairman, it is utterly impossible for him to do so. The gentlemen who presented the original memorial—the only memorial that has been presented to this Convention, different copies of it coming from different parts of the State, but all having been issued by them—these are precisely the same gentlemen who now come in with this vindication which has been laid upon our desks. Now, in this attempted vindication there is a clause which has not been read by the gentleman from Onondaga [Mr. Alvord] and to which I deem it my duty to call the attention of the Convention. It is upon the tenth page, and it is this: "Again if the trustees of an academy will raise two, three or five hundred dollars to buy apparatus, the regents are authorized to appropriate to their use an equal sum from the income of the literature fund." That is true; it has always been so. For twenty-five years that has been so. Some twelve thousand dollars or more are appropriated from the United States deposit fund, and wherever an academy raises a certain amount of money to buy books or apparatus, an equal amount is given from that fund, and a most salutary effect the provision has had. After having said that these public academies are "denominational," these gentlemen object to this, and they say "on what principle are fifteen or twenty thousand primary scholars, in so-called academies, selected for this peculiar favor? Why are not the million primary scholars in the public schools entitled to similar liberality?" Sir, there is no protection in this article of the Constitution to secure that bounty hereafter to the academies, and you see it is proposed here to take it away. It is a part of this proposed system; it is at the bottom of this whole enterprise to take from the academies all except what is secured by this first section, which is but twelve or fifteen thousand dollars a year, the simple interest from the literature fund—to take away all the rest and give it to the common schools. Are we not right, therefore, in saying that this attack on the Regents of the University originates in hostility to academic education? Have we not the right to say, when they avow it themselves, that their object is to strip these academies of the funds that have made them prosperous in the past, that have given them libraries, furnished them teachers, and made them exceedingly valuable institutions of education throughout the State. I repeat, sir, that those who stand up here to defend the Board of Regents, stand upon the defensive against this aggression.

Mr. GOULD—Will the gentleman from Albany [Mr. A. J. Parker] permit me to ask him a question?

Mr. A. J. PARKER—Certainly.

Mr. GOULD—I wish to ask him if the article of the Constitution already adopted does not absolutely protect the academies from any hostilities whatever?

Mr. A. J. PARKER—I will answer my friend. It certainly does not It protects them simply in the enjoyment of the literature fund, and no further. My friend from Columbia [Mr. Gould] who dreamed poetry many years ago, has not done dreaming it yet. [Laughter.]

Mr. CURTIS—May I ask my friend from Albany [Mr. Parker] whether this provision does not do precisely what the provision in the Constitution of 1846 does?

Mr. A. J. PARKER—I have nothing to say upon that subject now. I have not the Constitution of 1846 by me. Most fortunately for us, Mr. Chairman, the object of this attack is now avowed. After having proposed a constitutional provision which gives to the academies but $15,000 income annually, instead of $40,000, they propose now by the paper they lay upon our tables, and by means of which they seek to control our action, to take away that which has been given; and it is this attack in this form that I stand up here to resist.

Mr. CURTIS—May I ask the gentleman whether he means to say that the present Constitution gives $40,000 a year to the academies?

Mr. A. J. PARKER—No, sir; nothing of the kind.

Mr. CURTIS—Where is the difference then?

Mr. A. J. PARKER—I mean to say that the law gives it, the statute gives it; and they now avow the determination to take it away.

Mr. CURTIS—Mr. Chairman, I desire to ask the gentleman if when he says "they," he refers to the Committee on Education, or to their report?

Mr. A. J. PARKER—Oh! if it is any satisfaction to my friend from Richmond [Mr. Curtis] for whom I entertain a profound respect, I will relieve him from the weight of that statement.

Mr. CURTIS—And the committee?

Mr. A. J. PARKER—I cannot speak for the rest, sir. My friend who dreamed poetry may, perhaps, entertain different sentiments.

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Mr. GOULD—Well, sir, then for myself I will state that I have no hostility toward the colleges and the academies of the State.

Mr. A. J. PARKER—I am glad to hear that there are two members of the committee who have no hostility to the academies.

Mr. ARCHER—As a member of the Committee on Education, sir, I disclaim utterly, now, and at all times, any kind of hostility to the academies or colleges of this State. I will state further for the information of the gentleman from Albany [Mr. A. J. Parker], that the leading idea of the Committee on Education put forth in their report, was substantially agreed upon before a single memorial had reached our hands from the clerk's desk: to wit, the unification of the system of education in this State.

Mr. A. J. PARKER—Are there any other gentlemen that are about to approach the confessional? [Laughter.] If there are I will wait for them before I proceed. I am glad to see them assuming that position at last. But, after all, Mr. Chairman, what is to be the result of all this, suppose you do not protect us in the Constitution, and suppose you establish the board that they wish to establish under such influences as exist here, and give them the power to strip these academies of these funds except the pittance arising from the literary fund, what will become of the colleges and academies of the State? I appeal to this document upon our tables to show the *animus* that prompts this attack, and it is by no means necessary to show, or to say that the members of the Committee on Education believe in the justice or propriety of what is said here. It is enough for us that the attack comes from that quarter, that this is its object, and that it can readily be accomplished if this article in this form is adopted. I call attention to these portions of this document which purports to come from at least two gentlemen connected with the office of superintendent of common schools, to show that in that quarter there is a hostility to academical education, and to the protection of the academies of the State, which ought not to be encouraged by this Convention. Sir, the colleges and academies are powerful institutions in this State. Twenty-three colleges and two hundred academies scattered broadcast throughout the land justly enjoy an influence among the people, and I should like to know, Mr. Chairman, what possibility there will be of receiving the favorable vote of the people upon this Constitution, if it be sent down to them in this form, and with this open and avowed hostility of the gentlemen who have inaugurated this movement? I admit that there is a difference of opinion among the gentlemen who are pressing this article. While those that got up this movement would strip the academies of the public bounty entirely, the gentleman from Richmond [Mr. Curtis] has shown plainly by what he has said that endowments are indispensable to success, and when he brings before us Harvard College, and Yale College, and the University of Michigan as institutions which we may well emulate in this State he brings before us institutions largely and liberally endowed, and which owe their success chiefly or entirely to that endowment; and yet those who are with him in this matter would strip our academies of the miserable pittance of forty thousand dollars that is annually divided among them, and the twelve thousand dollars that are given them for maps and apparatus. But it is said we do not want two boards of education; that there are now two boards of education and they wish to have but one. Two boards of education; how can it be said that they exist now? We have a Board of Regents, who have charge of the colleges and academies; and more than that, they establish academies for the education of common school teachers, and do a vast deal of good in educating teachers for the common schools throughout the State. So far from having two separate boards now, the superintendent of public instruction is *ex officio* a Regent of the University, and they all sit together and deliberate in regard to every important matter that concerns the educational interests of the State. They are now, therefore, virtually one board so far as any public benefit can be derived from their joint action. The gentleman from Richmond places us who oppose this article in a wrong position when he says that we rely upon the age, the "antiquity" of this board, and upon that solely for its defense. We have no such reliance, we make no such claim. They attack the institution for its age. It is too much the fashion in these days, Mr. Chairman, to attack things because of their age. They attack this as an ancient and "antiquated" institution. That was the language first used in this body last summer in regard to this Board of Regents, and it has been attacked here because it was "antiquated." We defend it against that attack. I know it is very much the fashion of late to condemn what is antiquated. *Magna Charta* is condemned because it is antiquated, and even the Constitution itself seems to have fallen into disfavor for the same reason. There is a growing disposition to condemn what is antiquated and to propose change though it be not reform; and I think that the spirit of change has led on the gentlemen who are engaged in this crusade against our academies, and led them on blindly, so that they have not looked fairly at the existing institutions, and the great and beneficent results that they have accomplished. But I do not intend to occupy too much of the time of the Convention upon this subject. I should regard it as exceedingly unfortunate if we should meddle with this subject at all in the Constitution. We should leave the Constitution as it is in this respect. The Legislature created the Board of Regents, and they have it entirely in their control, and can abolish it entirely if they will, and there is no necessity for any action by this Constitutional Convention on that subject. I think, too, that we shall create hostility to what we do here if we attempt to make any of the changes that are proposed in this respect. Sir, it is certain that during the time that these Regents have had charge of the colleges and academies, not one instance has ever occurred in which the charge has been made against them of partisanship. The board is made up of gentlemen of different political parties, the majority of them now belonging to that party to which I am opposed, but that is no

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reason for disturbing them. They do not meddle with the politics of the institutions under their charge. Not a living man will dare to charge that they have ever abused their trust in that respect, or in any other. Now, sir, what may be expected from this commission that is proposed? It is proposed that the new board of education shall serve without pay. If they did, so far they would do what the regents have done. And if they are to serve at all, I trust it is to be so. But depend upon it it will not be so. It is not the fashion of this day. The gentlemen at the bottom of this movement desire to create offices, and to fill them, not for the honor merely, not merely for the chance of doing good, but to enjoy among other things, a good fat salary connected with the office. Depend upon it, if this board is created, it will be with liberal salaries. Depend, too, upon another thing, if the institutions are taken from the Board of Regents, and put in charge of a body of this small number created as the Legislature may direct, those will be political offices, and it will not be long before the charge will be heard in different parts of the State, that in controlling your academies and colleges, and in visiting them, they are exerting a partisan influence upon the one side or the other; and the very moment that idea is suggested and believed, their usefulness is gone. Sir, this had better be avoided. It has been avoided in the past, by the system we have now, and we had better continue to avoid it in the same way. My friend from Richmond [Mr. Curtis], in closing his last speech, has changed the figure that he presented to us so beautifully. It is no longer a wrecked vessel that he prides himself upon steering against the rocks, but it is the self-sacrifice that he makes of which he now speaks, and it is true that he does offer to sacrifice his honors as a member of this board by the article that he presents. I admire the patriotic and self-sacrificing spirit of the gentleman from Richmond [Mr. Curtis]. The ancient Curtius cast himself into the yawning gulf to save his country. His modern namesake would emulate his patriotism and imitate his example. [Laughter.] I admit that the gentleman from Richmond always acts most disinterestedly. I admire his singleness of purpose—the honesty with which he treats a question, as well as the eloquence with which he presents and advocates it. And although I almost always find myself obliged to differ from him in results, I do it always with regret; and I have only to say now, that if he persists in attempting this personal sacrifice, I trust this Convention by its vote will rescue him, if possible.

The question was then put on the amendment of Mr. Alvord, and it was declared carried.

The question then recurred on the motion of Mr. Verplanck to strike out all of the fourth section after the sixth line.

Mr. E. A. BROWN—I move that the committee do now rise.

Mr. GRAVES—I hope that the committee will now rise and report for this reason.

The PRESIDENT—The question is not debatable.

The question was put on the motion of Mr. E. A. Brown, and it was declared lost.

The question then recurred on the motion of Mr. Verplanck to strike out, and upon a division there were ayes 23, noes 23, no quorum voting.

Mr. MERRITT—I move that the committee do now rise, report progress, and ask leave to sit again

The question was put on the motion of Mr. Merritt, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. PROSSER from the Committee of the Whole, reported they had had under consideration the report of the Standing Committee on Education, had made some progress therein, but not having gone through therewith, had directed their chairman to report that fact to the Convention and ask leave to sit again.

The question was put on granting leave to sit again, and it was declared carried.

Mr. CASE—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Case, and it was declared carried.

So the Convention adjourned.

TUESDAY, January 21, 1868.

The Convention met pursuant to adjournment.

Prayer by Rev. Mr. KANEY.

Mr. VAN CAMPEN—I ask leave to make a report on the relations of the State to the Indians therein. I would state that the members of the committee whose names are not signed to this report dissent from it.

ARTICLE —.

SECTION 1. No purchase or contract for the sale of lands in this State, made since the fourteenth day of October, one thousand seven hundred seventy-five, or which may hereafter be made, of or with the Indians, shall be valid, unless made under the authority and with the consent of the Legislature.

§ 2. The Legislature shall have power to provide for an equitable subdivision of a necessary and sufficient portion of the several Indian reservations for the use and occupation in severalty of the several Indian tribes holding the same, and for the leasing any parts unapportioned; and any such subdivision and occupancy in severalty shall be deemed and taken to be the possession and occupancy of such tribe or nation, and the joint interest of any such Indian tribe shall not be dissolved except by their consent.

§ 3. The Legislature shall have power to confer citizenship on any of the Indians of this State, under such conditions and qualifications as shall be deemed wise and expedient.

§ 4. When the public exigency requires the use and occupancy of any of the lands or water privileges of the several Indian reservations for the construction of railways, common roads, bridges, manufacturing or other purposes, such lands or privileges should be so appropriated, and such tribe or nation holding such reservation shall receive a reasonable compensation therefor.

Dated December 18, 1867.

GEO. VAN CAMPEN,
STEPHEN J. COLAHAN,
FRANCIS SILVESTER.

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I concur in the report except that part which permits the lands of the Indians to be taken for "manufacturing or other purposes."

N. G. AXTELL.

The Convention then resolved itself into Committee of the Whole on the report of the Standing Committee on Education, Mr. PROSSER, of Erie, in the chair.

The CHAIRMAN announced the pending question to be on the motion of Mr. Verplanck, to strike out all of the fourth section after the sixth line.

Mr. McDONALD—I offer the following substitute:

SEC. 4. There shall be a superintendent of public instruction who shall hold his office for four years. He shall be elected by the electors of the State, and shall have such powers and perform duties, and receive such compensation as may be prescribed by law. There shall be a board of education of which the superintendent of public instruction shall be a member. Such board shall have exclusive administrative jurisdiction of all the educational interests of the State, subject to such laws regulating the same as the Legislature may from time to time enact. The Legislature at its first session after the adoption of this Constitution, shall provide for the organization of said board of education, the number of its members, terms of office, election, appointment of other mode of choice or designation. But no person thus chosen or designated shall receive any pay or emolument for his services as a member of said board except his personal expenses necessary to the discharge of his duties as a member thereof.

I have listened to the eloquent discussion on this article, and it has convinced me that there should be only one board of education in this State, and I think the same conviction must have come to every hearer of the debate. As has been stated, the academies, colleges and common schools should be mutual aids to one another. The one should be a higher grade than the other of the same system, and all should be under the charge of the same board of education. I think, also, that the discussion has convinced us all that there *should be* a board of public instruction for this State. As to the mode in which the members of that board should be elected, appointed or designated, is the question about which there has not been so much said, and which is properly but incidentally in the discussion. As to the Board of Regents, on the one side, it has been claimed that the Board of Regents should be abolished. On the other side it has been claimed that it should not be; that whatever duties that board have had have been well done, and that if there is any fault in their administration, it arises from their want of sufficient power. The proposition I now offer is simply a declaration that there shall be one board, with exclusive administrative jurisdiction of the educational institutions of the State, and it leaves to the next Legislature after the adoption of this Constitution, if it shall be adopted, the organization of the board as to its term of office, and the designation of it. If the friends of the Board of Regents are right in their position here, the Legislature will simply designate the present Board of Regents to be this board, and thus give them the jurisdiction and powers that the Board of Regents has hitherto lacked, in order to make them an effective and working board; or if the Legislature think that a part of the Board of Regents should be retained, and a part of this new board made up of other members, they will do that. This proposition does exactly what the friends of the Board of Regents claim to desire It leaves to the Legislature the entire organization of the board, simply declaring as a principle that there shall be but one board. I ask to have the proposition divided. The first part, as will be seen, provides in the very terms of the section itself, only it provides that the superintendent shall be elected instead of being appointed; and the second proposition provides for a board of education. I ask, therefore, that the vote be taken separately upon the different parts of the proposition.

The CHAIRMAN—The division will be made as the gentleman from Ontario [Mr. McDonald] suggests.

Mr. RUMSEY—I move to amend the portion of the substitute intended to apply to the first portion of the section, by striking out the word "elected," and inserting "who shall be appointed by the Governor with the advice and consent of the Senate."

The CHAIRMAN—The Chair is of opinion that the amendment is not now in order, there being already two pending.

Mr. KINNEY—I call for a division of the question, that a separate vote may be had upon that part of the substitute referring to the superintendent of public instruction. I desire that we shall vote upon that first. I think the provision recommended by the committee preferable to that of the gentleman from Ontario [Mr. McDonald]; and by voting down that clause of his amendment, it will leave the balance of his substitute to apply to this subject now under consideration, and we can vote upon that as we please, untrammeled by the preceding clause.

Mr. LARREMORE—I do not quite understand, Mr. Chairman, what the gentleman means by the term "jurisdiction." If the proposed board is to exercise visitorial powers only, then the phraseology of the fourth section is too comprehensive, and to some extent, suspicious. Why ingraft upon an article conferring powers intended to be thus restricted, an implied constitutional right of legislation, by authority subsequently acquired. It is true, that the Legislature can confer such powers now, without the sanction of the organic law of the State, but would not such an act (however objectionable) derive additional importance from the fact, that a Convention called to revise such organic law, had anticipated the necessity and provided for its constitutional recognition. A bill introduced in the Legislature from the creation of such a board of education as is contemplated by this report would necessarily invite public scrutiny and criticism; but an act of that same Legislature, conferring like powers upon such a board already in existence by constitutional enactment, might and undoubtedly would, fail to awaken that corresponding attention and interest which a subject of such grave

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importance should demand. Let us examine the section which a majority of the committee have offered for adoption, and we will soon ascertain its fair interpretation and meaning. This State board of education is to have supervision of all the educational institutions of the State," and perform such other duties as the Legislature shall by law prescribe." Suppose the Legislature should authorize such board to make such laws, rules and regulations as the educational interests of the State should require. That board acting under such authority, and planting itself on the constitutional provisions of this section, could virtually absorb and exercise the entire legislation of every college, academy and school in the State. If judged to be expedient, that board might ordain that no person should be licensed to teach, unless professing a particular religious belief, or possessing certain qualifications as to nationality. If thought best, certain text books might be prescribed for the general use of the schools throughout the State, thus creating a vast monopoly, and excluding books of equal or of superior claim and merit. In the city of Boston (if I am correctly advised) but one set of text books is allowed in the public schools, and all these are of Boston publication. While, in the city of New York (under our present system) all books of merit find a ready market and due appreciation. Would the same liberality be assured by centralizing all the school legislation of the State in a board of seven men? I do not propose to enter upon a protracted discussion of all the objections that arise in the consideration of this subject. I desire briefly to present some of the suggestions urged in the deliberations of the committee, and which have influenced me in arriving at conclusions somewhat different from those entertained by a majority of my associates. I do not believe, sir, that it is possible to select any seven or twelve men—

Mr. McDONALD—I call the attention of the gentleman to the fact that it says administrative jurisdiction, not legislative jurisdiction.

Mr. LARREMORE—I was about to say, sir, that I do not believe that any seven or twelve men, whatever may be their ability or experience, can successfully legislate for the entire educational interests of this State. The wants of the people in this respect differ as much as the various localities in which they live. In the city of New York the system of education is somewhat different from the neighboring city of Brooklyn. The same may be said of the neighboring county of Westchester. Yet it is a difference in details and not one of general results. The school laws that we now have are especially adapted to the localities for which they were enacted. The people asked for them, and the Legislature, the representatives of the people, sanctioned that request and embodied it in our statute books. Now, it is proposed, virtually (for that is the manifest intention of this section), to take that privilege from the people and confer it upon a State board of general supervision, which will place all the institutions of learning upon the Procrustean bed of educational uniformity. Colleges, academies and common schools are all to be ground up together in order to effect the contemplated reform. And what should we gain by it? Is it pretended by the advocates of this measure that one set of rules and regulations would be alike applicable to college and school? If not, then how is this much desired uniformity to be brought about? Are the founders and trustees of endowed institutions to be brought in subjection to this board of general control? If its duties are to be supervisory, merely, then why not insert a constitutional restriction to that effect, and prohibit the exercise of legislative powers. The more I reflect upon the provisions of this section, the clearer it appears that the term "general supervision" means in reality nothing less than absolute control. With such impressions of its general scope and intent, it was but natural that I should dissent from the report of the majority upon this subject. Nor does there appear to be any necessity for the creation of such a board as is recommended by this report. If its duties are to be of a supervisory character only, such duties now are and for a long time have been intrusted to the Regents of the University, and it would be impracticable to have two boards invested with and exercising the same powers. One more suggestion, and I am ready to submit the whole question to the judgment of the Convention. Our common schools are the nurseries of the State. From them are derived the only educational advantages which the greater portion of the community enjoy. The nearer we can keep them to the people, the greater will be their efficiency and influence. Build up this wall of separation in the shape of a State board, and you shut out the sympathies and active participation of those for whom this great benefit was designed. But if, on the contrary, you assure them that the trust is theirs—that they are responsible for its faithful administration, a growing interest will always be perceptible in the popular mind, that will ultimately accomplish the great work of popular education.

Mr. CURTIS—I would remind the honorable gentleman from New York [Mr. Larremore] my associate on the committee, and who speaks with a great deal of weight upon this floor as the president of the board of education of that city, that the section, as reported by the committee, and as it now stands, attains precisely the objects which he states to be desirable. According to that section as reported, the State board shall have general supervision. That is the word of the article, that is the word of the gentleman—that this board shall have general supervision of the institutions of learning in the State. Then, sir, the gentlemen expresses a fear that this board may receive from the Legislature certain dangerous powers in the management and regulation of the schools. If he will look at the matter a little more closely he will see that beyond this supervisory power which he himself is willing to intrust to a supreme board, this board proposed by the committee shall perform such other duties as the Legislature may direct — only such other duties as the Legislature may direct; so that what he fears the Legislature might in some contingency do for the board here proposed to be created, the Legislature may to-day or any moment in the present, do for the present superintendent of education.

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Mr. LARREMORE—May I ask the gentleman from Richmond [Mr. Curtis] a question?

Mr. CURTIS—Certainly.

Mr. LARREMORE—Does not the Board of Regents have the general supervison of all the institutions of learning in this State?

Mr. CURTIS—Yes, a general supervision; but its special relations are to the colleges and academies. What I wished to say to my friend was, that substantially the objects which he has in view, the objects which he eloquently advocated in the committee, are, it seems to me, provided for in the section now under the consideration of this committee.

Mr. LARREMORE—If it be proposed to give nothing more than a mere general supervision, that object is already accomplished by the existing law.

Mr. CURTIS—That, sir, is unquestionably all that we ought to give.

Mr. C. L. ALLEN—I do not rise, sir, to make any extended remarks after this subject has already undergone such full discussion. I regret very much that I was not here a part of the day yesterday that I might have heard what arguments were advanced by gentlemen in favor of the abolition of the Board of Regents of this State. But I was present in the evening and heard the discussion which then took place, but failed to be convinced of the propriety of the fourth section of this article virtually abolishing that board. I do not mean to recapitulate the arguments in favor of continuing the Board of Regents of this State. I only rise now for the purpose of correcting one or two errors that I have discovered in the manuscript which has been laid upon our tables, and which purports to be one of the documents belonging to this Convention, although it has not been ordered to be printed by this body. Now, one single suggestion made here, I rise to protest against. I speak for my own county, I speak for the village in which I live, and in which one of the oldest academies in this State is situated. It is stated here as one reason why this board should be virtually abolished, that the colleges and academies are almost exclusively denominational schools, patronized and founded by the various religious denominations. Public money appropriated to them, is therefore indirectly used in propagating religious tenets, or, at any rate, in aid of competing sects. Now, where the information was obtained, or where it purports to have been obtained by those gentlemen who drew up this article, I am at a loss to determine. I can speak so far as my experience extends for the academies within my own neighborhood. There are four or five of them in the county of Washington, and among those is one at Salem, one of the earliest incorporated in the State, and one at Cambridge, twelve or fifteen miles south. Now, as regards these two academies, they have always enjoyed the reputation of being among the foremost in the State, and their reports to the Board of Regents of the University from year to year, show this to be so. They have always met with the approval of that board, and those two academies, so far from being denominational or sectarian, have always had their boards of trustees composed of men of the different denominations that are prevalent in that county—Presbyterians, Methodists, Episcopalians, and other denominations. Our board of trustees is composed of members of every one of those sects, all combined and united together to attain the one great object of educating and benefiting the young who come within their province. But there is another matter here which gives a flavor to this whole matter. On the tenth page of this document, there is a short paragraph in these words showing the spirit in which this project is gotten up and the feeling of hostility that is endeavored to be created between academies and common schools. The paragraph is this: "If the trustees and patrons desire to have schools in which their children may be educated separately from the children who attend common schools, let them do so at their own expense," in other words, let the *whole* of the money of the State be appropriated for the benefit of the common schools, and after children have arrived at an age when they need further and higher education, let them do without it, or let their parents furnish it to them at their own expense; but let all the appropriations of aid by the State, be confined to the A, B, C institutions, the common schools. Now sir, in the academy in my own town, so far from there being any rivalry between it and the common schools, the schools and the academy are both in the same building, and the pupils go from grade to grade, and from floor to floor, until they arrive at the highest grade in the academy.

Mr. RUMSEY—I desire to ask the gentleman from Washington [Mr. C. L. Allen] whether in the academy that he speaks of in Salem, there is a primary department?

Mr. C. L. ALLEN—There is sir.

Mr. RUMSEY—Belonging to the academy or subject to the control of the common school?

Mr. C. L. ALLEN—Subject to the trustees of the academy, and under the immediate supervision of the board of education. They are all together, sir, and the institution has flourished and is flourishing, and as shown by the yearly reports, is continually increasing the number of its pupils, and if gentlemen will have the goodness to look at our reports for the last ten years, they will see the benefits that have been derived from this harmonious action. Therefore I protest against the assertion that this rivalry exists generally between the academies and common schools of the State; and I do certainly deny that it exists in my own village or neighborhood. The object of this communication is evident; it is to create a feeling against the academies and colleges, whereas, it is as much the duty of the State to foster those higher institutions as it is to foster the common schools. One needs the other, is dependent upon the other, and it is because our higher institutions have not been so generally fostered by the State, as those of other States have been fostered, that their reputation is not so good as that of some of the institutions of some of the other States. Now, sir, I am just informed that in another county there are nine academies, and that there is not the least hostility between them and the common schools. A single word, sir, in regard to the manner in which these petitions were

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obtained. Why, I have seen in my own county, a secret circular signed by certain gentlemen, chiefly residents of the city of Albany, requesting that this petition might be circulated as far as possible among the inhabitants of our county, and returned as speedily as possible to this city, the headquarters of this movement, and the point at which the war commenced. Is this attack upon the Board of Regents, and upon the academies and colleges of the State called for? Have we any evidence of any wish on the part of the people, or of the educational institutions of the State for the abolition of the Board of Regents? Why, sir, let gentlemen look at their files, and they will find, I think, not a single petition signed by the board of trustees of an academy in favor of the abolition of the Board of Regents, but on the contrary, they will find remonstrances from all of them. The trustees of our academy had a meeting on this subject, and they unanimously determined to remonstrate against the abolition of the board. Sir, if I do nothing else here, I must raise my voice and my hand in protest against this proposed abolition. Having done this, I have fulfilled the instructions given me by the board of trustees of our academy, and I repeat, that, in my judgment, there is not a single academy in the State from which a petition can be found in favor of this abolition.

Mr. VAN CAMPEN—I desire to ask the gentleman from Washington [Mr. C. L. Allen] if the academy of which he speaks, is not a part of the common school system of the village, made so by special act of the Legislature?

Mr. C. L. ALLEN—We had a special act creating a board of education in our village, and authorizing the academy to unite with them.

Mr. CURTIS—Will the gentleman allow me to ask him whether the school or the academy of which he speaks, is not what is known in this State as a union school?

Mr. C. L. ALLEN—No, sir; there are several union schools in our county.

Mr. CURTIS—But is not the one at Salem a union school?

Mr. C. L. ALLEN—No, sir, not in the sense of the word in which the gentleman uses it; although we have all become united in the great object we have in view. These schools are in the lower part of our academy, and they are all united together under the charge of the board of trustees.

Mr. VAN CAMPEN—Is it not under the supervision of the superintendent of public instruction?

Mr. C. L. ALLEN—No, sir; not particularly.

Mr. ARCHER—Does not the school of which the gentleman from Washington [Mr. C. L. Allen] speaks, participate also in the common school fund?

Mr. C. L. ALLEN—I do not say that it does not participate in the common school fund. Perhaps it does receive such share, as it may be entitled to under the common school laws.

Mr. ARCHER—In what respect then does that school differ from our union schools?

Mr. C. L. ALLEN—It differs in this particular, that it is united in one common effort with the academy for the advancement of education from the lowest to the highest branches. I repeat, there is no hostility between the academies and common schools of the State, so far as my experience extends, and so far as institutions in my own village and neighborhood are concerned, I utterly deny that there is any such feeling. On the contrary, they work harmoniously with each other for the attainment of the great object which they all have in view, and there is a unity and efficiency of co-operation between the board of education which has charge of our common schools and the trustees of our academy, all being under the general supervision of the trustees of the academy. I hope that the motion to strike out the fourth section will prevail.

Mr. VAN CAMPEN—The statement of the gentleman from Washington [Mr. C. L. Allen] goes to show the wisdom of what the Committee on Education design to do, to make to the extent that it is possible a unit of our system of education. The institution in the village of which he speaks is now existing under a special act of the Legislature, by which the common schools of that village are combined with the academy. The same institution is subject to the visitation of the Board of Regents, and it is also subject to examination by, and liable to make its reports to the superintendent of public instruction, and therefore it forms in itself a combination of both systems. Now, the object of the committee, as I understand it, is to organize in the Constitution a single system for the educational institutions of this State. I have no design to participate generally in this discussion, preferring to leave it to abler delegates than myself. But I desire to say one thing here, that I disclaim entirely any feeling of hostility against the higher institutions of learning in this State. And on the part of gentlemen who vote with the committee, I affirm that they entertain no such feeling. They justly attach to the common school system, being that department which lays the foundation for all future education, and in which all the children of the State have an opportunity to be educated, a greater importance than they do to the other departments; but far be it from any one of them to be opposed to the higher branches of learning, or to the institutions which teach them. Far rather would they foster the building up of those institutions, and elevate the standard of education generally; and it is for the reason that they may be successfully elevated, that they want to make the system a unit, harmonious and complete from the primary department up to the highest. Is there any impropriety in that? Look at the history of the educational interests of this State from the beginning, and you will find that this proposed measure is a necessity growing out of our present condition, and every year will demonstrate more and more clearly the necessity of making our system of education a unit. This important discussion has disclosed a fact of which I was not aware before, that there is a growing jealousy between the common schools and the institutions for teaching the higher branches of learning; and if no other reason existed that would be a sufficient reason for providing an educational system out of which no such

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jealousies could arise. I am therefore in favor of the report of the committee, so far as it proposes a single system for the whole State.

Mr. CURTIS—Do I understand the amendment of the gentleman from Onondaga [Mr. McDonald] to be a substitute for the fourth section?

The CHAIRMAN—The Chair so understands it.

Mr. McDONALD—It is so intended.

Mr. VERPLANCK—I hope the amendment will not prevail. I moved to strike out the proposition of the Committee on Education to establish a new board having entire control of the educational interests of the State. The proposition of the committee was only another way of saying that this Convention should abolish the Board of Regents of the University. Now, sir, the good ship "Regents of the University" has been several times carried among the breakers by the gentleman from Richmond [Mr. Curtis] and it is perhaps proper this morning that we should examine her condition and see whether we shall take to the boats and leave her to her fate, or like gallant sailors stand by and try to bring her safe into port. The argument of the gentleman from Richmond stripped of its glittering generalities and the ornaments with which he has so profusely decorated it, is simply this, that there should be a board of education in this State and that the superintendent of schools should be associated with other persons to make up this new board, and that the powers conferred upon the Board of Regents should be taken away from them and given to this new board, and that there should not be two boards of education. That, as far as I understand it, is the whole of the argument of the gentleman from Richmond, from the time he commenced this discussion until, to the delight of the auditory, he arrayed himself in shining garments at the close. I will content myself with replying to some of the arguments of the gentleman, and leave the rest of what he has been pleased to say to abler gentlemen of this Convention. By adopting the article contained in this report we have provided that the superintendent of public instruction shall be a constitutional officer. Not satisfied with this, it is proposed that he shall be one of a new board to which the interests of common schools shall be referred. In reply to that proposition, I say that no such board is necessary, because that interest has been well cared for in the past, either by the Secretary of State or in the superintendent of public instruction, and the common schools have been well and successfully carried on under the present system, and that no complaint has at any time been made to the public or the Legislature of any want of care of the interests of the common schools. If we establish this new board, the gentleman from Richmond [Mr. Curtis], claims that as there should not be two boards, we must do another thing. What is that? Why it is to take from the Board of Regents all the powers they now have except the charge of the State library and of this museum collection. I would like to ask the gentleman whether it would not be quite as proper, if it is necessary to commit the care of common schools to a board to give it to the Board of Regents, and if necessary associate with them the superintendent of public instruction, so far as concerns the common schools? The gentleman has conceded that this Board of Regents is composed of some of the ablest men in the State, men who are not active politicians, and that their duties have always been ably performed. If that is the case, how can you get a better board, and what becomes of the argument, the sole argument, of the gentleman which he has reiterated so often here, that we must adopt this proposition because there should not be two boards of education. But there are objections to this Board of Regents and one of them is, that it is not a new board. It cannot be said of it that it is without experience or that it does not enjoy the entire confidence of the institutions of learning of this State of which it has had the care for more than eighty years. We have had an annual Legislature, and several conventions, since its creation, but the proposition has never before this time been made to abrogate or abolish it; and it has been left for this Convention to strike the first blow at that venerable and useful institution. That no attempt has been made to abolish it or reduce its powers is the best eulogy that can be pronounced upon it, the best evidence that it has performed its duties well. Instead of taking away any of its powers, the Legislature within the last ten years have greatly added to those powers. I beg this committee to leave the matter where it is now, with the Legislature which has entire control of the subject and will take care of the educational interests of the State as it has done heretofore. I ask this Convention not to meddle with the subject, but if they do meddle with it, I beg them not to try the rash experiment of a new board which will result in dragging our educational institutions into the all absorbing vortex of politics.

Mr. SMITH—I beg pardon for rising again, as I have already occupied some time upon this question. I rise to make a single remark in regard to a point to which I wish to call the attention of the committee before they vote upon this question. It impresses me as a matter of so much importance that I do not feel at liberty to allow the vote to be taken without calling the attention of the committee to it. It will be perceived that by the scheme of this article, the superintendent of public instruction is to be the head and front of the new board. I fear—

Mr. ARCHER—In what part of the proposed article does the gentleman find that?

Mr. SMITH—I fear, sir—and it is to this point that I ask attention—that this scheme will create a political machine of a very dangerous character. Now, I will answer the gentleman. It is found in this portion, which reads, "The Legislature at the same session shall create a State board of education, to consist of seven members; of which board the superintendent of public education, the Secretary of State, and the Comptroller, *ex officio*, shall form a part." This places him at the head of the new board, which, undoubtedly, is the programme. Now, as we have seen, the superintendent of public instruction can sit in his office in the city of Albany, send out his petitions all over the State, into every school district, to teachers, county commissioners, and others intimately con-

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nected with the common school system, and make them his agents to procure signatures to petitions with which this Convention has been flooded, for the overthrow of the present Board of Regents. This fact shows the power which he possesses: and if the colleges and academies are also to be placed under his control, and he is to sit here as an autocrat over all, he can exert a power for political purposes such as no other officer under our republican form of government can exercise, and none ought to possess. I therefore invite the serious attention of the committee to this scheme, which constitutionalizes a political machine of such vast power and dangerous tendency.

Mr. CURTIS—I certainly cannot permit so important a proposition in regard to the intention and effect of this provision made in the presence of so many gentlemen who were not present during the debate yesterday, to pass, without saying a word in defense of this report, and, indeed, in defense of the personal honor of the committee themselves. As to the remarks of the gentleman from Fulton [Mr. Smith], I have only to say that they are a sufficient answer to the remarks of the gentleman from Erie [Mr. Verplanck], who preceded him. The gentleman from Fulton [Mr. Smith] says that the superintendent of education as a member of this proposed new board, will have a vast political power in the State, in the way he has described. I will remind the gentleman that the difference between the recommendation which the Committee on Education made to the Convention, and the present system which the gentleman wishes to maintain is that at present all the power which he speaks of as inhering in that officer now to be made a member of the board of education, is within the sole discretion of the superintendent of public instruction; whereas in the system provided by the committee, there is to be a board of education, of which the superintendent is himself only a member, and to the supervision and control of which all of his acts are to be subjected. Therefore, sir, the gentleman from Erie [Mr. Verplanck] who has already voted that there shall be a superintendent of public instruction, and who fears the introduction of political elements into the educational system of this State by the proposition of the committee, has voted for an officer who now exists and who, if he chooses to be a political officer, is uncontrolled, and absolute, and he votes against the proposition of the committee that the action of this officer shall be supervised and controlled by the board of education. I say, therefore, that the remarks of the gentleman from Fulton [Mr. Smith] are a complete answer to those of the gentleman from Erie [Mr. Verplanck] upon that subject; but to say this was not my object in rising. I had the honor of calling the attention of the committee yesterday to the extraordinary course pursued by the opponents of the article submitted by the Committee on Education. I said that it appeared to be the intention of those gentlemen to avoid the issue that was raised, and had I been in any doubt upon that point during the morning session, my previous impression was confirmed by what occurred in the evening. I propose to recur for a moment, not having had the opportunity last evening, to the extraordinary course of remark pursued by the gentleman from Onondaga [Mr. Alvord]. After this proposition had been under discussion in this committee for some time the gentleman from Onondaga, as if the Committee on Education had been engaged in a conspiracy or plot, or were urged by some private motive or passion, rises in his place, and says that in order to test the sincerity of the committee in their recommendations he will propose an amendment. Sir, I am far from charging the gentleman with having fully considered the extent of meaning which may fairly be applied to his words. The sincerity of the committee—in order to test that he proposes an amendment. Well, sir, what was the amendment? Assuming that the Committee on Education wished to create, either for themselves or in obedience to some secret influence behind them, a vast array of new political officers to be paid by the State, he proposes as a test that the officers so created shall not be paid. The committee, having no such intention as that which he ascribes to them, and being under no such influences as he suspects, at once accepts the proposition that these four persons to be appointed or elected to these offices shall be unpaid. The sincerity of the committee having survived this test, what is the next movement of the gentleman? He takes up a document laid on our table last evening—so far as appears here a purely individual and unauthorized document, unknown certainly to every member of the Committee on Education, and unknown I presume to every member of this Convention—

Mr. RUMSEY—May I call the attention of the gentleman from Richmond [Mr. Curtis] to the fact that he is doing injustice to the persons who have signed this document. It is a communication that was sent to the President of this Convention, a communication which is upon our files and is a part of the record of the proceedings of the Convention.

Mr. CURTIS—So far, sir, I am corrected, but has it been officially brought to the knowledge of the Convention?

Mr. RUMSEY—It is a communication sent to our President of the Convention and by him submitted to the Convention.

Mr. CURTIS—Was it read when submitted?

Mr. RUMSEY—No, sir; it was referred to the Committee on Printing, to see whether it should be printed or not, and they have not yet reported.

Mr. CURTIS—Then I am correct in saying that it had not come to the knowledge of the members of this committee or of the Convention until it was laid on our tables last evening. But my object in referring to this document, is to show the course of the gentlemen who have conducted the argument here in opposition to the recommendations of the Committee on Education. Their whole argument, substantially, has been based upon and sustained by the statements made by this (so far as the Convention is concerned) hitherto unknown document. Now, having tested the sincerity of the Committee on Education, the gentleman from Onondaga [Mr. Alvord] betakes himself to what? Why, sir, to endeavoring to sustain the very theory upon which he proposed to test their sincerity,

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that there was some sort of plot or conspiracy, some personal passion or prejudice of which the committee, unknowingly to themselves, had been made the tool on the floor of this Convention. Now, sir, I will characterize the argument of the gentleman. In the course of our deliberations here we have perfected an article on the judiciary. In that article we have extended the term of office of a judge of the court of appeals to fourteen years. I will suppose that during the discussions upon that point, it had come to the knowledge of the gentleman from Onondaga that Mr. John Jones or Mr. John Smith, of this city, or of some other city in the State, was opposed to the present system of the judiciary, and was in favor of a fourteen years term for judges of the court of appeals; that having been brought to the knowledge of this fact, the gentleman from Onondaga [Mr. Alvord] should rise upon the floor of the Convention and open an attack upon the report of the Committee on the Judiciary, recommending the extension of the term to fourteen years and should flourish a paper in the faces of the committee, and say that he had discovered the secret of this recommendation, and it was this, that Mr. John Jones, of Cattaraugus, or Suffolk, or Albany, or some other county, was very sure that he could be elected a judge of the court of appeals and wished to sit for a term of fourteen years. Now, sir, I have no doubt that if the gentleman should urge any such argument as that, this committee would judge his conduct precisely as I am sure upon reflection, they must have judged his conduct last evening. Well, sir, I listened with eagerness to the remarks of the gentleman to discover why this recommendation of a general board of education was not agreeable to the interests of education in this State, and I am obliged to say that I failed to see it. He declared that in some way or other the propositition was a war upon the academies of the State. He declared that our academies were to be deprived of that bounty which they now receive, and that this was a part of this vast conspiracy, this enormous mare's nest, which is even larger than those which usually reward the researches of that gentleman—this great conspiracy to put certain persons in power who would thereupon proceed to wreak their vengeance upon the academies and to sacrifice them to the common schools. Now, what was the authority for all this? Why, sir, it was the opinion of the half-dozen gentlemen whose names are signed to this argument. That was his only authority. There was nothing in the report of this committee to warrant his statements, no authority whatever except the opinions and statements of these half-dozen gentlemen upon which to base this theory of an enormous conspiracy against the academies for the benefit of the public school system, and to create several political officers for the benefit of favorites. I can find nothing further in the speech of the gentleman from Onondaga. But

> Soon as the shades o'er Syracuse prevail,
> 'Tis Albany takes up the wondrous tale:

and no sooner had the argument and the citations of the gentleman from Onondaga ceased, than the gentleman from Albany [Mr. A. J. Parker] arose. What did the gentleman from Albany tell us? Repeating the argument of the gentleman from Onondaga [Mr. Alvord], he told us that this was an assault upon the academies; and in the impressive manner in which he always utters his sentiments on the floor of this house, he called our attention to the fact that in some manner the revenues of the State now devoted to the interests of the academies were to be diverted. His attention was instantly drawn to the statement in the first section of the article reported by the committee (which repeats the provision of the ninth section of the present Constitution, so far as this is concerned) that "the revenues of said common school fund shall be applied to the support of common schools, the revenues of said literature fund shall be applied to the support of academies." Sir, that had been already constitutionally agreed upon, and being brought to the attention of the gentleman from Albany, he tells us that the present revenue of the literary fund is very small, that it is only twelve or fifteen thousand dollars a year, and that the sum annually divided, under the present system, among the academies for various purposes, amounts to about forty thousand dollars; the difference between the small revenue of the fund and the amount distributed being made up by the Legislature. Well, sir, our duty is with the Constitution, and I ask the gentleman, and I ask the committee so far as academies are concerned in the Constitution, what is the difference of the basis? The Constitution at present declares that the revenue of the literature fund shall be applied to the academies; the article under the Constitution which we propose restates exactly the provision of the present Constitution. The gentleman says it is raised to forty thousand dollars by act of the Legislature. Is there any thing in this section—is there anything in the action of the Convention which, in that respect, binds the action of the Legislature? Has any body proposed to forbid the Legislature to increase the sum? For what purpose is the sum of the revenue of the literature fund for the benefit of academies raised to forty thousand dollars? Plainly that the objects which are supposed to be sought by the academic institutions and which have approved themselves to the judgment of the Legislature, may be attained, and I look in vain in the article reported by the committee, as I look in vain in the intentions of the committee in reporting the article to find any reason why, if the Legislature next year or twenty years thereafter, should choose to devote enough to make that sum forty thousand dollars, they should not do it! Mr. Chairman, it is perfectly plain that there is nothing, so far as the suggestions of the committee are concerned, which affects the relations of the academies to the State, and then, what is the retreat of the gentleman from Albany [Mr. A. J. Parker]? He says and it is the same doctrine that has been suggested by the gentleman from Onondaga [Mr. Alvord], that if the committee shall have their way, then, somehow or other the Legislature is to be put under the influence of this vast conspiracy, and that they will be cajoled into reducing this appropriation possibly to the bare ten or fifteen thousand dollars. This may

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be, in the opinion of the gentleman from Albany [Mr. A. J. Parker], and in the opinion of some subsequent Legislature, a wise disposition of the funds at its disposal. But I deny entirely, in the name of the committee, any such intention on their part in the section they have submitted to this Convention, and I repel the imputations the gentleman means to convey by the course of remark in which he indulges. Then, pushed to the wall by the denial of the chairman of the Committee on Education that there was any such conspiracy or intention, being told on the authority of the Committee of Education that the whole system reported by them was framed with grave deliberation, after a survey of the whole educational interests of this State, and before a single petition was laid upon the table of this Convention, and before it was known to that committee that there was any more than a general feeling in regard to the management of the educational affairs of this State, I say that the gentleman from Albany [Mr. A. J. Parker], receiving this denial of the chairman of the Committee on Education, does what? He waits, and another member of the committee rises and excuses himself in person; he waits, and another member of the committee excuses himself in person. Then, after it is shown that the academies are not to be defrauded, and that the document hostile to the academy interest had no influence whatever upon the conclusions of the committee, the gentleman from Albany [Mr. A. J. Parker] can find no other resource, and says he is willing to hear any other gentleman "who comes to the confessional." He calls the action of the committee in utterly repudiating baseless insinuations, coming to the confessional. I say, sir, that, in my judgment, the result did not leave the committee kneeling at the confessional but it left the gentleman from Albany [Mr. A. J. Parker] and his friends at the bar of the candor and intelligent judgment of this Convention. In regard to the general project, Mr. Chairman, I will not detain the committee. The proposition is simply this, that the interest of education in this State, which is one, which consists of the common school system and the union schools as a part of it, and the academies and colleges, toward which the State has borne certain relations, and all constituting the highest interest of the State—an interest far greater than any interest which it possesses at this moment—that this vast and comprehensive interest be placed under the charge of one department. My friend from Fulton [Mr. Smith] asked with eagerness what is the reason? Why not permit the present state of things to continue? The reason is plain, that the duties of one board which now exists as I have shown are duties that could be easily and more wisely discharged without the existence of a separate board. Having shown that, we say there is a necessity for a unification. By the unification of this system the government is simplified, and our duty as a Constitutional Convention with reference to the government of the State is, so far as we can, to simplify it in every direction. Having shown that the great object was not hostility to the Regents of the University, that it was not hostility to the academies, and not for the arrangement of the manner in which the regents had discharged their duty, but that it was regard for the great interests of the State, and a desire that they might be simple, and not complicated as they now are, which induced the committee to report the section—having shown all these things, the gentleman still professes to see no reason why this change should take place! I repeat for the information of the gentleman, that this change is not sought because it is supposed that the Board of Regents have in the past, or will hereafter fall short of their duty. It is because the method which the committee propose is simpler, less cumbrous, and more attractive to the whole spirit of our system than the state of things which now exists. The gentleman from Washington [Mr. C. L. Allen] has told us of the condition of the academy in his town, and that seems to be an illustration of the very difficulty in which this State is placed, and which we wish to avoid. He says that there is a certain feeling of hostility somewhere. The academies are of opinion that, if the present state of things is changed, they are to be exposed to some undue wrong. Sir, the academies will find that they have precisely the same constitutional protection under the care of this Board as they have under the present Constitution. In citing the case of the academy in his county, the gentleman from Washington [Mr. C. L. Allen] probably cited the case of one of these schools which are subject in one department to a committee of visitation from the Board of Regents, and in the other to the care of the superintendent of public instruction. That is an illustration of the whole system. It has been found that the union schools in this State are peculiarly vigorous. Is there any reason why so vigorous a system of schools should not maintain the position under a single system which they have always maintained under a double system of supervision? I repeat that none of the gentlemen who have conducted the opposition upon this floor have yet shown a solitary reason why that single system should not prevail. I trust, therefore, that upon reflection, the gentlemen of the Convention, after having fully ascertained, and being sure, so far as it is possible for them to receive assurance from "purely impracticable" and "purely poetic" gentlemen, who it seems—and I hope not to the serious injury of the State—are gathered upon this floor by the side of "practical" gentlemen speaking through the lips of the gentlemen from Onondaga [Mr. Alvord], will still find sufficient reason in the great and simple facts of the case, (which the gentleman from Erie [Mr. Verplanck] complains we reiterate, and reiterate and reiterate as if, sir, in defending a particular point which was attacked on various sides, it was not necessary always to stand in the same position, and always to maintain precisely the point occupied) I hope, I say, sir, this committee will find in these facts that there is no great conspiracy against the academies of this State, that the proposition of the committee preserves intact all the rights of the academies, and that their proposed substitute, for the present arrangement for the care of the educational interests of the State, has been prepared in the highest interest of that great

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subject. The committee come to this subject with minds as unprejudiced as to any subject which has been submitted to any committee, or adopted by the Convention; they come to it. feeling, with all men, that this interest, which is the corner-stone of the safety, prosperity and permanence of republican institutions, should have no divided or uncertain care. After all I have said in this debate, sir, I heartily beg pardon for having again detained the committee so long.

Mr. ALVORD—In rising to answer the gentleman from Richmond [Mr. Curtis] in the remarks which he has undertaken to make particularly complimentary to myself, I am sorry to learn now that the equanimity of the gentleman has been so much disturbed by the argument I made last evening, as to cause this apparent personal attack upon myself. I had supposed, sir, that during the entire of this Convention the gentleman and myself, with the exception of his hobby in reference to women and this question, acting cordially together, that there was no necessity of ascribing to me any personal motives against the committee, of which he has the honor to be the chairman, in the remarks I made. I believe I understand enough of parliamentary law and parliamentary courtesy to know that outside of the way in which I personally ought to treat gentlemen as a committee, it was not my province and privilege, and I did not intend in any terms or any words to allude to the Committee on Education. We were in Committee of the Whole here, and I alluded only, or I thought I alluded, in the usual strict words in the matter, to the Committee of the Whole, in the remarks that I made in reference to the compensation of these individuals. I had not the slightest idea of alluding to the Committee on Education, and I trust that the gentleman will take this statement not by way of apology, but by way of putting myself *rectus in curia*. Sir, I undertake to say to the Committee of the Whole who had this matter in charge (it having been taken away from the Committee on Education, and become the property of another committee of this Convention), in so far forth as it regarded themselves, as there seemed to be an apparent majority in favor of the proposition which was then under consideration, that I would test the sincerity of that Committee of the Whole here upon the subject, whether or not this board should be elected with or without compensation, or whether it should be created under the same laws under which the regents exist. Now, again, in the further portion of my remarks, I am inclined to think that in the repetition of them they will gain still greater force, for I have not seen upon the floor of this house, from the beginning to the end, a gentleman under any circumstances get up and appear to be so completely overwhelmed by argument as the gentleman from Richmond [Mr. Curtis]. He has the power by legitimate and straightforward argument, without any necessity whatever to refer to persons, or undertake to throw by mere sneer or sarcasm upon the argument of men—I say he has the power, and enough argument upon which he can stand, outside of a resort to personal attacks of this kind, to stand against the strongest man in this Convention, when soundness of views are his, and I am afraid that his whole armory of legitimate argument has been lost again by the argument made upon the other side, and he has been compelled to resort to the argument of personal attack, the last I supposed he would undertake to use in a matter of this kind. Sir, in reference to this subject, I had supposed that the remarks which I had made had carried with themselves, so far as they were concerned, the conclusion that we looked not to the Committee on Education, but we looked to that which was behind, the Committee on Education talking to us as a part of the public of this State in reference to the question. I take it, sir, that wherever may have come the animus of the Committee on Education in making up this report, when we find those who are ostensibly from among the people, presenting themselves before us upon a platform distinct and marked, we have a right legitimately to use as an argument the position taken from these supporters of the Committee on Education among the body of the people. We have a right to argue and to deduce from what they say in reference to the matter, what will be the result if the scheme of the committee shall be carried out. It is not because the Committee on Education desire it—it is not because their idea is that this will be the result; but it is because these men who stand behind, who are sending up petitions clearly, plainly and indisputably marking the course they are to take, that we have a right to argue that this will be the conclusion of the matter. I think, sir, that I have said sufficient on this point. I will come now legitimately to the matter under discussion. Now, sir, the Committee of the Whole (not the Committee on Education, which I shall specify by name hereafter when I mean that committee), have concluded to insert the amendment which I offered here in reference to this matter, that the board shall serve without salary or compensation of any kind. I am of the opinion, sir, that that renders doubly sure, and beyond all controversy and doubt, that this board of education, if put into the Constitution, and made a part of the fundamental law of the land, erects an autocrat in the person of the superintendent of public education, over the educational institutions of this State. These men, acting as his advisers, come up here as a board from time to time to consult with him, and they will be completely and wholly under his control —he standing in his position here as the head of the educational interests of the people of the State of New York, dictating and controlling in all matters connected with the interests of the State. Now, sir, I undertake to say that there is not, and that there cannot be, any sort of office created in this State, that will begin to have the political power, and the political influence of the office thus created—the minister of public instruction. His power permeates throughout the entire of this State. The canals run only through portions of the State, and the power of the parties who may have them in control, is limited to those lines. But, sir, so far as it regards the power of this superintendent, it goes, to use the words of the gentleman from Richmond [Mr. Curtis] last night, from Buffalo on the one side to Greenport on the other, into every single

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nook and corner of the State—into every school district. Sir, it begins its work at the very foundation of society; for however ignorant man may be in this enlightened age, however neglected they may have been in their younger years in the way of education, there is hardly a man so poor, or so low, or so debased, but who desires the education of his children. He desires that they shall take a higher point in the world than his father had before him. And the children of these men are at the disposal of the teacher so far as it regards the matter of education, and the power of the teacher is controlled by the superintendent of public instruction. And sir, that officer has a gigantic and immense power which may sap the very foundations of the government of this State, instead of educating our people to the full appreciation of the benefits of Republican institutions. I say that this power is one that we should not crystalize into the Constitution; it should be kept in the hands of the people; it should be kept where the hands of the Legislature could reach it, and who know the wants of the people so far as respects the matter of education, and they can from time to time control and regulate. I agree with the gentleman from Richmond [Mr. Curtis], that education lies at the very foundation of the prosperity of our country; that it shall do no harm, but that good shall come from it should be our aim. Now, sir, in that light, I have the right to use the argument of those who, outside of this Convention, are the only ones who appear at its bar to represent them, and I have still further a right to quote from that celebrated document which has been so often spoken of. I desire here to say, and I can repeat to the members of this committee, that there has been an undue anxiety on the part of the men who are undertaking to foist this matter into the Constitution, by the manner in which they have proceeded in regard to this matter of getting it before us upon our desks. They were aware of the fact that by the deliberate vote of this Convention, the communication had been sent to the Committee on Printing to determine whether or no the document should be printed. They were not willing to await the action of that committee; they were not willing to await the action of this Convention in reference to the placing of this document upon our files; but, sir, simulating in all respects, except the putting in the number of the document, the form and shape of our documents, they have printed it and laid it upon our table in order that it should take a part in these deliberations. What other object was there in regard to it? It being before us in this form and in this shape, we have a right to use it for the purposes of this argument. Now, sir, we have a communication which has been printed by this Convention, under its rules, from the Board of Regents, and in that communication we find that these parties who have laid this document upon our table are the original authors of all these stereotyped petitions which have come to us upon this subject, and that they send at the same time they send these stereotyped petitions through the State, a circular, and in that circular they state what their object, desires and intentions are in regard to this matter. I have a right to say here, outside of the Committee on Education, and nothing whatever to do with the Committee on Education, what the intentions of those who pressed this matter are, what will be the legitimate and ultimate result of the action of this Convention in making the section now under consideration a part of the fundamental law of the land. I will read the second paragraph of the instructions which they send out with the petitions. I read:

"The memorial is sent to you in the belief that you fully indorse the free school law of 1867 and desire the complete triumph of the free school system, as well applied to the higher as to the common schools."

So that their object and their aim is to cut down the academies and universities of the State and compel them to come under the iron rule of this superintendent, and share the common fate of the common schools of the country. That, sir, is what we are opposed to. Now, sir, there is no need of discussing it. We might as well talk plain face to face in reference to this matter. There is in this State, as there is in every other State, no matter how republican may be its form or theory of government, a difference among the people. Some from necessity are poorer than others in this world's goods. Some from necessity have a different organization of the mind, and are in favor of removing their children, so far as their education is concerned, to another and different sphere from the ordinary school education of the country. They will do it, sir, and that class of men in this State, I am happy and proud to say, appreciate the benefits and advantages of education, and believe in the necessity as a preventive of crime, and as an advantage to the growth of the country, that the children of the State should be educated, and they have been the most ready and the most eager in the past history of the State to promote the largest amount of taxation to be had among the people, that the greatest amount of benefit shall be assured to the children of the State in their education. There is no difference of opinion or sentiment in this regard. Whence comes the money for the support of the common schools? It comes from those men who are supporting your academies and your colleges, it comes from the men whose means are abundant, and they do not wish to be compelled by any solemn enactment of the Constitution, to send their children, as they will necessarily, from out the bounds of the State into other localities, for the purpose of education, rather than to be compelled to come so far as regards the educational interests of the State, under the iron rule which this board will bring about. And it is for this reason, among others, that I am opposed to the idea of the change. What is the difficulty? What is the trouble under the existing state of things? Let me look a little into the record. In 1867 there was a law passed by the Legislature of this State, authorizing the trustees of any of the academies within the limits of the State to surrender their franchises under certain conditions, and the academies to become union schools of the country. Under that law, those academies which thus surrender their franchises, become part and parcel of the common school system of the country, if they desire to, by their

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own motion. But, sir, in portions of the State, for instance in Salem, in Washington county, and in Watertown, in Jefferson county, the academies did not desire to go to that length. They desired to retain, so far as a portion of the organization was concerned, the academic form. And they had special laws passed, authorizing the establishment of primary institutions, leaving the custody, and ownership, and management of the higher branches of education in the trustees, as originally granted—marrying, as it were, the two systems together, one under the common school idea, and the other under the academic idea. No sort of protest or objection, but, on the contrary, the hearty concurrence of the Board of Regents of the University has been had in reference to this movement. They have not attempted in the Legislature, they have not sent circulars to the academies, nor undertaken to use any efforts to prevent this. They leave this matter to the trustees to do as they shall see fit, allowing them to judge what the best interests of their locality and of the State require under the circumstances, and leaving it to the Legislature of this State, from time to time to make special enactments in reference to the subject, as parties shall come up and ask them at their hands. There is, therefore, no difficulty, none whatever, in this translation, if necessary, of the academies of the State into the plan of union schools, or the transfer of some portion of the funds of the academy to the control of the superintendent of public instruction for the benefit of the schools that have thus changed their plans. Now, sir, another thing—and I am only reiterating possibly in this regard an argument which has been used upon this floor, and which it seems to me has great force and weight in it. You propose in this proposition creating and crystalizing in the Constitution this system of education, to make seven men a board of education, one of them the superintendent of public instruction, two others of whom are *ex officio* members of the board, and of course are men who are elected through political considerations, and who being merely ornamental as members of this body will never be selected by their political party with reference to any duties that they are to perform in this board; men who from the necessity of their position will reflect not only their political sentiments but must also work for the accomplishment of the political ends of their party. Then, so far as it regards at least two of the three *ex officio* members of the contemplated board, they must of necessity be and cannot avoid being political rather than educational in their desires and inclinations. Then what do you do next? You come down to the selection of four members of the board by the Legislature, or I care not in what way, either by the voice of the people or otherwise, they must of necessity be elected, so far as they are concerned and they always will be with reference to their political position; and they, sir, as well as we, knowing the tremendous political force that can be exerted by the head of an institution like that, permeating all over the State of New York, if they shall agree with the political superintendent who is at the head of that department, they will enjoin upon him the exercise of political power for the purpose of building up their political hopes and aspirations. In this connection permit me to say, although it has been hinted to me privately outside of the Convention by members here, but notwithstanding that I desire to place myself right before this committee and before the world, that my opposition in this matter grows out of no hostility to the present superintendent of instruction. I have counted upon him in the past as I count upon him to-day, and I trust that I count knowing what I believe and think is true, as a warm and devoted friend of mine personally. I believe, so far as it regards the administration of the trust that has been imposed upon him by the people of this State, he has done it admirably and well in the past, and would continue to do so in the future, if he were permitted by the exigencies of the time longer to retain his position. Therefore my remarks have nothing whatever to do with him. The term of his office is fixed and settled. The flat has gone forth through the statutes of this State, and his mantle is to descend to his successor, who is to be of a different political faith from that which he has. Therefore, so far as it regards the insinuation that personal motives entered into the controversy, so far as I have any regard to this matter, I make this simple denial of it in this way. But I tell you that the superintendent of public instruction in the future of public education, could not depart from the political duties that are put upon him, no matter how you may name him. For men will always be politicians, and the result will be that this great system of education will be a foot-ball in the politics of the State of New York. It may be, sir, that I look upon this with gloomy eyes and with clouded vision; but if there is so great a necessity for this great reform which gentlemen desire to put into this Constitution, can they not do it—have they not the power to do it through the Legislature? If it shall work badly, and does not meet the anticipations of those who framed it, then it will be in the power of the Legislature to remedy that difficulty, and the ship of education can ride on in its course in safety. But if they put it in the Constitution, there the system will remain unalterably fixed for twenty years or more. While that power has rested with the Legislature from the foundation of our government, while there has been no desire or attempt to crystalize a board of education in the Constitutions of 1777, 1821 or 1846, and while the people of the State of New York have made such rapid strides in their educational interests, I think that we should leave the future interests of education in the same hands until it has been shown that under their auspices it works badly. Sir, I ask any man, and I speak it with pride as a citizen of the State of New York, to go over the broad expanse of this Union and point out to me in any State, old or young, where the results of common school education have been so beneficial to the interests of the people as the common school instruction of the State of New York. Sir, it is a bright glory of the people of this State that it is so. And sir, let the matter be as it has been in the past, and from time to time, as the necessity shall arise for a change in its organization, and its administration, that

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change can be worked out by the hands of the people speaking through the Legislature; but do not mold or make it so hard or so inflexible, that it cannot in one jot or tittle be altered or changed for the better. That is my view in regard to this matter. I have been so far as I am concerned, honest in the opposition which I have made. I stand upon what I believe to be the best interest of this State. I speak, sir, not because of personal feelings against this, or that, or the other man, but simply from the solemnity of the oath that I have taken here to do that which I regard as best for the interest of this State, and as a member of this Constitutional Convention. And I wish to say another thing before I conclude, I do not drop it as a fire-brand either. I ask gentlemen to reflect upon the matter for themselves. There has been, sir, in the past a great difficulty and trouble growing out of the administration of our common school system for reasons that will make themselves obvious when I name them. There has been probably good cause for the complaint. I refer to the constantly recurring change of class books in the common schools of this State, costing parents who send children to school large amounts of money. People have said, and have repeated over and over, and over again that it has been because of combinations between certain interests in the management of schools, and the book-sellers. Sir, this may or may not be true, but it is a lamentable fact that so great has been the diversity in books from time to time, and the anxiety to get better books, and consequently to approach a higher grade of learning, that there has been this change almost weekly sometimes in the history of the schools of this State; aye, even before the leaves of the books have become thumbed by the children, the order has gone forth to throw the books one side to take in other text-books published by other book-sellers. And these books are not only stereotyped, but they are copyrighted, and there are only certain book-sellers from whom they can be procured, and then at fixed prices. Sometimes they are to be got only from a single book-seller in a place; but there are cases where no book-sellers had them at all, and they were only procured from the teacher's desk. It may not be that this result has been that of a combination, but these changes have been a great evil and a source of complaint. But, sir, you give this autocratic and despotic power into the hands of this proposed board, and that board will have it in their power to fix an iron rule in reference to this thing, and to change it at their pleasure. I do not say that it is the teachers who have enjoyed the profits arising out of this state of things, but I do say that there is in the minds of the people of this State, a strong suspicion that such is the case. And, sir, put it into the Constitution, giving this board a despotic power, with no responsibility so far as the Legislature is concerned, and there will be no limit to the abuses which will come upon the people. For, sir, in this enlightened age when a man studies how he can make the most out of doing the least, that board consisting of really enlightened and educated men, and able to look through the mill-stone, with the almighty dollar as the end in view. I think they will find a way to get a piece of it before they get through. I have but one other remark to make and then I have done. I have understood the learned gentleman from Richmond [Mr. Curtis], again and again, to repeat in his place, that the Board of Regents of the University in this State have, from the very commencement to this time, discharged all the duties incumbent upon them, by statute or otherwise, to his entire satisfaction, and to the approval of the people of the State. We know how that board is composed. We know how it has been composed from the early stages of its history to the present time. We know that it is composed of men who are among the most erudite and learned in this country. It is true that they may not have been professional school teachers; it is true that they may not have all been at the head of colleges, or professors in collegiate institutions; but they are men of large and extended views, men of a higher order of education, and men standing in their different positions at the head of their respective professions. They are men eminently capable from their political knowledge, and who with a good foundation in learning are capable of taking hold and determining what the higher interests of the people of this State, so far as their educational interests are concerned, need. They are a board that is ready made. If you desire that there should be this unification of the educational interests of the State under one board, let your superintendent of public instruction be made a member of the board, name him in this Constitution if it must be so, and make your Board of Regents your board of education. You have your superintendent of common schools now. You have your Board of Regents of the University now. Marry them together, and give to your Board of Regents of the University not only the powers that they now enjoy—twenty-three of them, but also the powers which you propose to give to the board suggested by this section. Make that provision, and your work is all done, and there is no necessity of going through the machinery of erecting another public board in this locality. There is no necessity for any feeling on this question between the common schools on the one side and the academies on the other. This is the simple solution of this problem. If the gentleman will propose some such amendment as that, although I am entirely opposed to the idea of putting the matter in the Constitution, I will receive it if it must be and go with it to the people. Gentlemen on the other side complain that an antagonism is sought to be brought about between our institutions of learning, the common schools on the one side and the academies and the universities on the other. Where has this antagonism been brought in? By whom has it been brought in here? I do not undertake to say that it has been brought in by the Committee on Education, but it has been brought in here by those people who have come here and demanded that this radical change should be made constitutional. It is unfortunate that those gentlemen should have thrown this fire-brand into this Convention, but the fact is so plain that "he who runs may read" that this hostility has been produced by those who seek to break asunder the

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friends of the great cause of education in the State of New York. I trust, therefore, that the sober sense of this committee will see to it that their efforts shall not be rewarded with success. I tell gentlemen, and I do not tell them by way of threat for the purpose of influencing their course in this matter at all, that this proposition if it succeed will create more opposition against our Constitution than almost any thing else that could be suggested. The people of this State do not desire to have matters placed in the Constitution except there be a necessity for it. I believe that the people of this State are so much wedded to the interests of education that they do not wish to have it put in an iron mold that cannot hereafter be changed as the exigencies shall demand. And now, sir, thanking the committee for having listened to me so long in the remarks I have made, and in which I have endeavored to be courteous and amicable in what I have said in reference to my friend from Richmond [Mr. Curtis],

"To nothing extenuate or aught set down in malice,"

So that I do my duty as a member of this committee, I shall satisfy myself with what I have said, and I trust that gentlemen will not upon a mere meager majority insist upon putting this wrong principle in the fundamental law of this State.

Mr. M. I. TOWNSEND—I do not propose myself to become a party to a fight between a clerk in the department of the superintendent of public instruction, and a clerk in the department of the Regents of the University. I have always found matters enough of that kind of my own seeking—of my own getting up, matters that happened to myself—to engage in, and therefore, I cannot consent to step in as the champion of either of these gentlemen in this controversy, and in my action upon this question, I shall have no reference to what one or the other of these gentlemen have said, or what one or the other of these gentlemen wish. I regret, Mr. Chairman, that my friend from Richmond [Mr. Curtis], as chairman of the committee that reported that article to the Convention, has fallen into the same trap that some others have fallen into in this Convention, of accepting from his enemies, that is, the enemies of the measures which the committee have reported, a proposition brought forward by them, however plausible. When the gentleman from Onondaga [Mr. Alvord] offered his proposition that the four non official men to be created as members of this board, should serve without pay, whether he designed it or not, he struck directly at the power and efficiency of the body of men which it was the design of this committee to create, who should have charge of the interests of education. And my friend from Richmond [Mr. Curtis] will pardon me for expressing a little surprise at the adoption of that proposition, when the proposition itself must have been seen to originate from the circle affected by the breath of the salaried officer of the Board of Regents, affected by the breath of an individual whose salary will be destroyed by the change proposed to be made. and my friend from Onondaga [Mr. Alvord] and my friend from Albany [Mr. A. J. Parker], and my friend from Erie [Mr. Verplanck], sitting in a sort of a charmed circle, so far as this question is concerned, will pardon me if I state that when I heard from them the high eulogiums which they have passed upon the Board of Regents, those eulogiums beyond my power to imitate and beyond my power to conceive and comprehend; my thoughts ran back to the time when the apostle of God was preaching the truth of sacred things to the people of Ephesus, when the cry rose up, "Great is Diana of the Ephesians." The Sacred Book tells us why that cry rose up; and my friends will pardon me if my imagination ran back to that date, and I thought whether it was possible that the endangerment of any body's craft in this day had led to the same cry. I must be pardoned, sir, for talking plainly; I must be pardoned for making plain allusions. My friends know that it is in my nature; I cannot talk otherwise; I cannot think otherwise; and if my friend from Erie [Mr. Verplanck] should find that my mode of discussion, as he indicated in regard to the gentleman from Richmond [Mr. Curtis], was not as satisfactory to his mind as his own mode of pertinacious discussion, when the canal question was before the Convention, I hope he will pardon it in me, as being the weakness of my nature and not a sin that is not to be forgiven. Now, sir, I beg pardon of my friend from Onondaga [Mr. Alvord] when I say that it is not the political aspect of this board that he is afraid of that induces him to oppose its creation. No matter what he thought at the moment; no matter how zealously he worked himself into the position of his argument; that is not what he is afraid of, because this pet Board of the Regents of the University are created in precisely the same way that it is proposed to create the four men whose creation he deems may be so fraught with political influence. Their election is by the Legislature of the State, and he has no right to say, and he does not believe—he will pardon me for saying it—when the zeal is down, when the heat of argument is passed, he does not believe that any Legislature will elect men of a different faith from themselves as members of the Board of Regents of the University, any more than the men to be elected to these places are to be of a different political faith from the majority of the Legislature at the time when these men are elected. So that it is not political influence that this gentleman is afraid of. This board will not be any more political than the Board of Regents. As I said yesterday, I find no fault with any gentleman, either in the Board of Regents or elsewhere, for having political views. If they have none they not only are not fit for an official position, but they are not fit to live under the blessings that we enjoy under this government. I do not deem that this question is of the importance that some gentlemen seem to attribute to it. If we should follow high literary example, if we should adopt the course which was adopted for the benefit of his cat and kitten by the celebrated Dr. Johnson, and have a large hole for the cat and a small one for the kitten, I do not believe the cause of education in this State would be entirely obstructed or entirely stopped. I do not

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believe that any body in this State, sympathizing with either branch of education, either that of the common schools or academic education, is hostile to the other system. If any gentleman, either in this Convention or in the State at large, is friendly to the subject of education, he wishes all these systems to succeed. I understand the question to be this, and if I am wrong, if this be be not the question, then I wish some gentleman to show me what the question really is. I understand the question to be this: Will our system of education move more efficiently by setting new men, young men, active men, at work in controlling and managing our system of education, or by leaving a part of the system under the control of those who are paid nothing for their labors, under the control of those scattered in every part of the State, devoting but a very little, and some of them none of their time to the subject? This I understand, sir, is the question. It is not the question, and it is below the dignity of this house to fight the battle between those two clerks. It is not a question of politics: for politics will live and exist in the State. Sometimes one set of men will have the lead, and sometimes the other. It is not a question between colleges, academies, and common schools; for every man possessed of intelligence, or without intelligence if he has knowledge enough to know that education is valuable, is in favor of all these things. Am I right about this? I ask the gentleman from Washington [Mr. C. L Allen] if the preceding provision of this section has not secured to colleges and academies forever, the use of this very fund that he refers to? How, then, is it in hostility to colleges and academies? I know, sir, that whoever attacks what is venerable, assumes a very unpleasant task. The Gracchi at Rome were stricken down in the streets for doing it. It was said that they raised a sedition. It was not they that raised a sedition. It was the men that cried "great are the privileges of the Senate" that raised the sedition. It is not the committee that have made this report that have raised this cry. It is the gentlemen who cry out "great is Diana of the Ephesians," and claim that there is hostility between the common schools and the colleges and academies. Read that circular, if you please, in regard to the department of public instruction, and you will find that all that is suggested there is the complete triumph of the system of 1857. I wish to Heaven that system might triumph. I remember when we had but one free school in the city of Troy, I expressed the hope that I should see the day when the common school system of the city of Troy should be stronger than the common council, stronger than every other interest. I thank God I have lived to see it, and instead of destroying education, the attendance at the so-called academies in the city, is five times as large as it was then, and we have a high school in the city that is an ornament to the city, an ornament to the State, an ornament to the civilized world, and that furnishes education through the common school system in every respect, except the effete languages, equal to that in the colleges of the State: and a man that expresses the wish to see the common school system in this State triumph, is a man with whom I will join hands, effete institutions to the contrary notwithstanding. When I say this, I say it with no hostility to the Board of Regents. There are many things about that board that I do not understand. Perhaps I should have understood them better had I seen what I understand is the chief characteristic of that board. Had I been in that convocation last summer and seen that marvelous and mysterious cap and gown which the Chancellor wore on that occasion, I should have been satisfied that the preservation of the board was necessary to the enlightenment of the people of the State, and the preservation of our system of education; but as I did not see it, sir, I confess an entire ignorance upon that subject. If this system that is proposed by the committee will give us a body of working men, I am for it. If it will not I am against it. We have ageeed that we shall have a living, active man, and not a clerk in a coal hole in one of the State offices, to be at the head of public instruction in this State, so far as the common school system is concerned. This, I think we should not recede from. But I am free to say this to my friend from Richmond [Mr Curtis], with all due respect, that unless the paying of these four men, that it is proposed to put in that board, shall be restored, or the prohibitions against paying them shall be stricken out, I shall vote for the proposition of the gentleman from Ontario [Mr. Folger]. It is the very difficulty that exists in regard to this Board of Regents. My friend from Albany [Mr. A. J. Parker], I think, yesterday spoke about the good old days when men served for nothing. Sir, when men serve for nothing they do nothing. It is said that upon the other side of the water men do render services without salaries and without compensation. That may be true upon the other side of the water, but, sir, it is not true upon this side. Now, let me call the attention of this Convention to a solemn fact, that they may just as well admit here as not, many gentlemen in this Convention now stand in the maturity of their years in the possession of large and liberal wealth. But there are probably not five men in this Convention who have not been compelled to earn the wealth they now possess by hard and diligent toil. They have now passed the time when their services in any cause can be particularly useful, at no period of their lives have they been able to leave their business and devote themselves to any cause without compensation, whether that cause be political, whether it be religious, whether it be benevolent, whether it be literary, it is a necessity of our state of society, and I pray to God that the day may be far distant, when this state of society shall be changed. Men in every pursuit here are laborers; and, in the language of that same book that told me about the terrible cry that was raised at Ephesus about the dignity of Diana of the Ephesians, in that same book I learn that "the laborer are worthy of his hire:" And, sir, if you want men to do something, these men must be compensated for what they do. If these four men that are to be selected for the purpose of fostering the interests of education in this State are to be worth any more than four

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members of the Board of Regents, they must be furnished with a salary that will enable them to live in the meanwhile. It is a necessity of our state of society; and although I am prepared now to vote in the present state of things against the proposition of the gentleman from Ontario [Mr. Folger], yet, if it be the final and persevering judgment of this body that we should prohibit the Legislature from paying any compensation to the four individuals, I shall vote to strike out finally from this section every thing except that which creates a superintendent of public education.

Mr. A. J. PARKER—It would be inexcusable in me not to say a few words in answer to what has fallen from the honorable member from Richmond [Mr. Curtis]. I regret exceedingly, sir, to see that he is so sensitive in regard to what was said yesterday upon this subject, and that he has lost his temper this morning, and assailed me for what has been said in debate. He seems to desire to place me in the false position of having assailed the committee of which he is the honored chairman. I assure you, sir, I have had no such intention. I have great respect for every member of that committee, and more especially for the chairman, as he knows full well. It was very natural that I should suppose, when I knew that all the action of this Convention had been based upon a circular that originated here in a public office, and had been sent through the State and returned in the form of memorials, when I knew that all our acts had been based upon those memorials, that they had all been referred to that committee long before they reported—it was very natural that I should suppose that they had been somewhat influenced by those memorials. And yesterday, when that was alluded to, when those memorials and the later article were referred to, members of the committee rose, one by one, to reject the alliance with that memorial, to repudiate its influence, and to declare that they had acted independently of those documents. That was all very well, and yet the fact remains that all those papers were before them—I mean the memorials—long before they made their report. Now, because, when they had gone on one by one, each one "excusing" himself, as the learned chairman says, because I happened to ask "if there were any others to come to the confessional," my friend has taken great offense; he has laid it up, and it has rankled in his breast, and he comes in this morning and makes an attack upon me. I regret, exceedingly, Mr. Chairman, that he has misapprehended me. I take back that offensive expression. It was intended to be said playfully. It was not so received. I take it all back, Mr. Chairman, every word. I should be very sorry to give offense to the members of that committee. They are gentlemen, not only for whom I entertain great respect, but I entertain respect for their judgment, and ordinarily I am very happy to agree with them. I will always do so when it is possible. But if they are wrong—clearly and palpably wrong before the Convention and the country, as we believe them to be, we can not agree with them, and we must say so, and differ with them. We must not commit this Convention to a project that will sink to the lowest deeths all the work that we shall do, to say nothing of its palpable injustice and impolicy. So far from acting on the offensive I stand upon the defensive, and I only rose yesterday, drawn into the debate unexpectedly and unprepared, to defend the institutions of this State; to defend its colleges, that I thought were attacked by the chairman of the committee, and unfavorably compared, at least, with other institutions; to defend its academies and those who have had charge of them for many years; because it was a subject in which I had once felt great interest, having served in the board, having served in every capacity connected with the academies, as a student, as a principal of an academy, as a trustee, and as a regent, and I had a right to feel an interest in that subject and to stand up in the defense of those institutions when they were assailed. It is only on the defensive that I speak here. I assail no one. I do claim that the policy intended to be inaugurated is hostile to the best interests of the State, and ruinous to our academic system of education. I charge no hostile motives upon the committee. I charge it, however, as the policy that governs the memorial and the later document, as the policy that results from the *animus* that is shown in all that has emanated from those that have inaugurated this movement. It is a war upon the academies of the State. It is an attempt to deprive them of the small pittance that has heretofore been given to them to sustain them. Gentlemen yesterday pointed to the first section of this article to show that they were protected by the Constitution in that first article, and I referred to it, not to find fault with it, but only to show that they were there protected simply to the extent of fifteen thousand dollars at most, the income of the literature fund, and that all the rest was, as it has always been, left open to the action of the Legislature; and to show that if this policy prevails, which I stand up here to resist, it will sweep away all of the balance of the forty thousand dollars and the twelve thousand dollars that have been given it. I do not say that this committee would effect that object. I do not believe they desire it, but those who uphold the action of the document that lies upon the table actually propose it now; sir, they propose it in advance, propose it before they secure the action of the Convention under which they will shield themselves hereafter. I do not believe in this system of leveling downward. I do not believe in tearing down the academical interests of the State to the lower level. I do not believe in depriving them of the little benefit that they have heretofore had from legislative favor, and yet that seems to be the policy that underlies the movement that has inaugurated this proceeding. I do not charge it upon the committee, but upon those that move in accordance with the action of the committee, upon those that seek to control the future operations and the future laws that are to be passed in regard to it. I insist, sir, that all that we have done is to defend against this attack. We have claimed that the true policy was to lay this whole matter upon the table; to treat it as was done with the report of the Committee on Charities; to consider it a matter that belongs properly to the Legislature and not to the

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Convention; for certain it is, sir, it is a matter that heretofore has never been taken charge of by a Constitutional Convention. It belongs to the Legislature. The Legislature created the Board of Regents; and not one word has ever been said in any Constitution of the State in regard to them. But the attack has been made, and the fact that it was an old institution, of eighty years standing, has been referred to from time to time in the repeated remarks that were made by the gentleman from Richmond [Mr. Curtis] and he says age is sometimes a good thing. He says it is good in wine, and it is bad in bread and eggs." Pray, what has that to do with this question? How is it in men? How is it in institutions, is the great question here. He says, "there is less vigor in age," and it is true of the physical condition of man, but is there not more wisdom? I should be sorry to disbelieve that oldest doctrine upon this subject. How is it with institutions? Do they not grow and increase and thrive by age? Why, the two institutions in New England, which he has held up for our example and with which he has compared the colleges in this State most unfavorably, Yale and Harvard are of very great antiquity for this Continent. It is great age as well as great wealth that has given them their present prosperity. Oxford in England the very first university upon the globe, has stood, many say, since the day of Alfred the Great; certainly since the time of Edward the Confessor, in 1050. It is by great lapse of time, and by great age, and by the accumulation of wealth and means to educate, that these institutions have grown up into their present prosperity and their present ability to accomplish so much good. The question here is, whether age is not necessary to these institutions? Surely gentlemen here do not mean to descend to the slang of the day and ridicule old age wherever it is found, in institutions as well as in men. I deny the applicability of any thing like that to this question. Sir, I would preserve that Board of Regents and have it keep on in doing good as it has done. At least, I would leave that question to the Legislature. Sir, I would keep in that board the chairman of this committee, now a valuable member. He seeks to withdraw himself, to commit what he calls a *hari-kari*, an official *felo de se*. He seeks to do it. Let us prevent him. If it was physical death that he sought to accomplish, it would have been murder, at the common law, for us to aid him. It would be manslaughter now, under our milder statute. But it is his official *felo de se* that he covets. Let us prevent even that, Mr. Chairman, if we can, for if we should join in accomplishing such a result, so unfortunate to the cause of education, I think we should at least be guilty of a misdemeanor. I only add, I regret exceedingly to have been misunderstood in what I said, and to have it supposed for one moment that I would make an unkind remark or entertain an unkind feeling toward any member of this Convention. I have learned to this moment to cherish and prize the acquaintance of every gentleman I have met here, and I should blame myself justly if I allowed myself to utter one word that could be construed as intentionally offensive to any member of this body

Mr. MERRITT—I think we have discussed this matter sufficiently, and that we can now safely go into Convention, and I hope that the committee will agree with me that it would be better to arise and report progress upon this article, and then to proceed to consider it in Convention. There are no amendments which require printing, and we can proceed at once and can reach conclusions that will be as satisfactory as if we remained in committee. I therefore move that the committee rise and report the article to the Convention and recommend its adoption.

The question was put on the motion of Mr. Merritt, and it was declared carried by a vote of 39 to 30.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. BEADLE from the Committee of the Whole reported that the committee had had under consideration the report of the Committee on Education and the Funds relating thereto, had gone through therewith and had instructed their chairman to report the same to the Convention, and recommend its adoption.

Mr. ALVORD—I trust the usual course will be taken, that the committee will be discharged from the further consideration of the subject and that it will be referred to the Convention. I make that motion.

The question was put on the motion of Mr. Alvord, and it was declared carried.

The SECRETARY then read the first section as follows:

SEC. 1. The capital of the common school fund; the capital of the literature fund; the capital of the United States deposit fund; the capital of the college land scrip fund, and the capital of the Cornell endowment fund as it shall be paid into the treasury, shall be respectively preserved inviolate. The revenues of said common school fund shall be applied to the support of the common schools; the revenues of said literature fund shall be applied to the support of academies, and the sum of twenty-five thousand dollars of the revenue of the United States deposit fund shall each year be appropriated to and made a part of the capital of the said common school fund; the revenues of the college land scrip fund shall each year be appropriated and applied to the support of the Cornell University, in the mode and for the purposes defined by the act of Congress donating public lands to the several States and Territories, approved July 2d, 1862; and the revenues of the Cornell endowment fund shall each year be paid to the trustees of the Cornell University for its use and benefit.

Mr. McDONALD—I offer the following amendment:

"After the word 'and,' in the third line, strike out down to the word 'treasury,' in the fifth line, and insert as follows: 'and the capital of all educational funds paid or to be paid into the treasury.' Also strike out the rest of the section after the words 'school fund,' in line eleven."

The object of this amendment is to provide a constitutional enactment that all educational funds of the State shall be inviolate, and not to enumer-

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ate or specify any particular fund except the capital of the United States deposit fund; the capital of the college scrip fund, and the capital of the common school and literature funds; that is, it is to name those funds for which the State is responsible as trustee for the grantor and after specifying these, to enact that all other educational funds of the State shall remain inviolate. This simply strikes out the enumeration in the Constitution of what is called the Cornell endowment fund and the Cornell land scrip fund. I do not know that I name them exactly, but those are the two funds. It is proposed by the committee that these two funds shall be mentioned in the Constitution, and shall thereby be directed and enacted to be given to the objects to which they are now directed by law. Now, I will ask the committee what is the reason of the selection of this college and thus putting it into the Constitution? Every college in this State has an educational fund, more or less, which the State has given it. Union College has a large fund which it has derived partly from the State and partly from private gifts. Every college, I need not enumerate them, has either a greater or less fund which came from the State, and which the State has a right to direct and control; and I ask why make any distinction between the colleges of this State? Why not let them all stand upon the same foundation, and simply say that all educational funds shall remain inviolate? I know it is not said here, but I claim that the object is to make this a State institution, not by direct, positive law, but by the recognition of its funds in the Constitution, so that it becomes an absolute State fund, and thereby becomes in that regard at least a State college. Now, what reasons are urged here? I am aware that the founders of this institution hope much for it. I know and feel that the founder, Ezra Cornell, will do every thing that he has promised, and I know and feel, contrary to all aspersions, that he intends to do every thing to carry out, and will carry out his part of that contract to the uttermost. But what I contend is, that, even if he does, I am not so sure that it will be such a success that the State will care to father it, or will care to preserve it in its Constitution. The State has other colleges. It has another college, which has been partially, in a certain respect, a State institution; which college, although I am a graduate of it, has not of late years made that progress which we see other colleges throughout the land making. I allude to Union College. Let us see what there is about this Cornell University that is so different from any other college. In the first place there is this difference—it is all on paper. There is a large building about completed. I suppose a class has been entered there; but other than that and further than that, it differs from the other colleges of this State by being still in the future; and whatever it may accomplish is still to be accomplished. We have other colleges in this State that have accomplished much. We have none, I know, that will equal in reputation Yale or Harvard; and why? Simply because we have too many. That is the only reason. A State cannot make a college without students! The students are taken up by these various colleges, and we have a number of first-rate colleges instead of one great college. That is the alleged evil that we have grown up under. We cannot help it. The ground is fully occupied. It is like the soil. After a certain number of trees are planted in it, and draw all the nourishment they can from the soil, you cannot plant a great tree, for the smaller trees take up all the nourishment there is. So these colleges take up all the educational aliment there is in the State; and if this great institution is to grow, as they expect it is, it must grow to the injury of the present colleges of the State. And for that reason I think it will only rank as one of the main colleges of the State and not as that great college for which its founders so much adore it. Now I am not here to say that our system is not better than the eastern system. I believe that in this State, by virtue of the great number of colleges, there are a great many more students educated. As far as my knowledge extends, I have never yet seen any institution in which the professors were not ready to teach the students all they were willing to learn. It is not the college, it is the student. If those who are graduates of college will look back, they will find the man, on the average, in the world as they found him a student in the college. He is the same individual; and if he has derived that benefit which he has had an opportunity to derive, he has made good use of his advantages; and if he has not improved his opportunity, if he goes in the college without ability, he will come out in the same condition, though it may be a little polished. No college can furnish brains. But it is claimed that this institution is to have an endowment which shall outstrip that of any college in this State, or I was going to say the United States. Is it an endowment that makes a college? There are now in this State three colleges that have more endowment than they can use; and there is in this State, one college that has a greater endowment than I understand the Cornell University expects to have from its present funds. Columbia College now owns property in the city of New York which is valued at $2,900,000. It is not a very productive property I admit; but is located on the Fifth avenue, Sixth avenue and Sixtieth and Fiftieth streets, and although it does not bring much revenue into their treasury at present, it is rapidly increasing in its value as any other property can be throughout the State. So there stands Columbia College with a greater endowment now, their property worth more now than all the property which has been given either by the State or Mr. Cornell to that institution and yet that is not the greatest college in the State, or at least if it is the greatest in numbers on account of its law and medical departments, yet it may be doubted whether it is the largest in its college department proper in the State. It has all the funds it wants, it has all the professors it wants, and I have never yet heard of any professor refusing to go to Columbia because they did not pay a sufficient salary. Take Union College, which has had more funds than it can use. Fifteen years ago it had an attendance of over two

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hundred and thirty, I think about two hundred and fifty students, and only a corps of ten or eleven professors. I find now its funds sufficiently large with an attendance of only one hundred and thirty-five and a corps of fourteen professors, so that neither the addition of a corps of professors nor of a fund makes a college. Again it is said Cornell University is a kind of State institution, because it has the Governor and the Lieutenant-Governor and several other *ex officio* trustees. This has been so with Union College ever since its organization; and the last election of president was accomplished through a vote of those *ex officio* trustees, so in that it does not differ. But it is claimed that this is a college where there is to be no denominational influence, where denomination is not to be considered. This has been the distinguishing element of Union College from its commencement. At the time that I was there, I know there was a Presbyterian, an Episcopolian and a Baptist, and there was one that I think did not belong to any religious denomination. Whether an entire disregard of denominational influence, is an element of success or of weakness, I am not able to determine; but I must say that for the past few years, denominational colleges have progressed, while my own *alma mater* has rather decreased, so that this is not a distinguishing difference Therefore I cannot see why this college should be mentioned rather than any other. Let us simply say in our Constitution, that all educational funds shall remain inviolate, and when we shall have done that, we shall have done justice to the Cornell University. We shall have done justice to every other college in the State; and we shall not have given any cause for the feeling which I am sorry to say has some influence in regard to this matter. I know that the colleges of this State feel to blame, themselves, because they have let slip so good an opportunity to largely endow themselves. But Mr. Cornell has by his extraordinary diligence, by his munificent offer, and by his advantageous circumstances outstripped them in this regard. He has secured the fund; and I only hope that the college of which he is the honorable founder, will derive from it the benefit which he expects it will. Having thus obtained this fund, having received this declaration in the Constitution, I know he will be satisfied; and I hope he, or his friends will not ask any more. But there is one other thing. It is claimed by some that this is a munificent gift. Admit it, I am glad, I am happy, and I rejoice, to see any worthy individual make so good an appropriation; but it is not the only munificent gift that has ever been given in this State. My own father—for I have a right to call him such, as he always pleased to call me his son—the lamented Dr. Nott, gave his life to his college, and when he died, gave as great a gift as Mr. Cornell. He donated to Union College, as I understand, real and personal estate. The personal estate amounts to over $225,000 at present, and I understand the real estate, not yet sold, is worth the same amount. He applied it, during his life, as best he could, and every one who had the good fortune to be one of his sons—as he was pleased to call all his pupils—and as I am sure we were pleased to be called—knew with what benefit he gave his services. And as I said before, he gave this munificent gift, which I understand to be equal to that of Mr. Cornell. This does not take away from the value of the gift on the one part, but it shows that there are in this State other colleges whose friends have thus shown their natural feelings, and to whom they have been equally kind. But we come to another thing. There is another claim that this college is bound to give, or will possibly give, free tuition and free room-rent. What is the fact? In Genesee College, in Western New York, it has been absolutely free for the past eight or ten years. For a $100 scholarship you can get a year's tuition, and if you are not able to pay that you can get it by asking for it. That has always been so in that college. In Hobart College, at Geneva, as a condition of a gift by Trinity Church, tuition and room-rent has been absolutely free for the past fifteen years, but within the past year they have asked to be and have been released from this obligation, and commenced to charge tuition; so that after an experience of fifteen years they decide that free tuition is an injury, rather than a benefit. In Union College, to my knowledge, there has been aided almost one-third of the students, and the best of it is, nobody knows who gets it. You cannot call a man a charity student there, and be sure you are right; and if he knocks you down, the rest of the students will say you were served right. In all the colleges of the State I will venture to say no young man has ever been turned away because he was too poor to pay his tuition. But it is claimed that this college aids the soldiers of the army. Well, what of that? Is this any thing peculiar to this college? Why, we find—

Mr. AXTELL—I would like to ask the gentleman if these remarks are pertinent to the proposition before us.

Mr. McDONALD—The pertinency of the remarks would be better seen if the gentleman had heard the discussion in the Committee of the Whole. I understand all these claims were made in the discussion in favor of this institution. I was not present, but I understand they were made. Now, with regard to the aid of the soldiers of the army. Lately an organization of which I believe the honorable gentleman from Clinton [Mr. Axtell] is a member, sent a circular to the various colleges to see what they would do for the soldiers of the American army, or the children of those who died or were disabled in the service, and I think they received a universally favorable response from every college to which they sent a circular, and a promise to take a limited number of soldiers or children of soldiers, and educate them free, and without charge for room-rent. I say that there is no difference between this college and the other colleges of our land, except that it is in the future, and the present colleges are in the present. I do not wish to say any thing against the future prospects of any college. I know every thing will be done to make that college as great as it can be. But if I am right, there is no place for it to grow in this

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State. When you look at Yale and Harvard, this great university, part of these, as they call it, amounts to but few men. It has a law school. That is a small part at Yale, but a large part at Harvard. It has a medical school. This is quite large at Harvard, and not so large at Yale. It has a theological department. But as to the university plan proper, Yale, like all our colleges, has a department of arts and sciences. You will find a few students there; and at Columbia College you will find a department called school of mining; and there you will find more, but not very many students—so that the difference is more in name than in fact. We have Alfred University, in Allegany county. We have any number of universities, with a corps of professors, and a scheme as large as any can be made. There is no trouble in the scheme on paper. But as I have said I do not believe we have the material here in this State for a great university—all educational aliment of this State is used and needed by our present colleges, and I know enough about the colleges of this State to know that they will not willingly die—never. They are accumulating funds as well as other colleges. If they cannot get them from the State they call on their friends, and they will all become independent as far as money is concerned, so that their income will be sufficient to support them. When I look at it I have to think sometimes about some of these schemes—look at the scheme of the People's College. There was a most magnificent scheme. It had this same fund. It had a rich man behind it who said he was willing to give money; but when the Legislature came to a place where he had to put it absolutely out of his hands, he was not willing to do it. There stands the building, which they have put to another use. I hope it will turn out to be an equally good use. Again, there was the State Agricultural College at Ovid. I remember very well the advocates of this plan. I shall never forget the day—a broiling day in June—that I heard a most eloquent address from a deceased Governor, whose portrait I now see before me—the Hon. John A. King, on the occasion of the laying of the corner stone of that building, and if I continued to believe, as I did then believe, the eloquent and silvery words of the orator of the day, when describing the glorious future of the State Agricultural College, and the great benefits to be derived therefrom, I should not doubt that this institution was to bring about the entire renovation of agricultural education in this State. I should almost believe it was to make every thing grow without work. I do not know how it was to be done, but he persuaded me at that time that it was to be done. As I look about, I think I see some men in this Convention who were believers in the great future of that scheme and are here now believers in the great future of this university, who were then present and who then insisted upon and did walk two and a half miles in order to do honor to that occasion and institution; and now as I go by and see it, I see a building being erected on the State agricultural farm, near this building, for a very different use—the care of the insane—and I am led to recognize that this is sometimes the result of such schemes, and when I look at the building and know that the committee have pronounced it unfit even for an insane asylum—all I have to say is, thus do human hopes sometimes vanish.

Mr. A. J. PARKER—For the purpose of facilitating business, I move that the same rule adopted in the Convention in discussing the article on the powers and duties of the Legislature, be applied to this article.

Mr. COMSTOCK—Mr. President, I would like to inquire what that rule was precisely?

The PRESIDENT—It allows five minutes to each speaker.

Mr. COMSTOCK—I do not think that such a motion comes with good grace from gentlemen who have already occupied the floor for hours on this subject.

Mr. A. J. PARKER—I withdraw my motion with great pleasure. I supposed that so much had been said already that there was no desire to say any thing more upon this question.

Mr. MERRITT—I renew the motion.

Mr. KINNEY—I move to amend by making the time ten minutes instead of five.

The question was put on the amendment of Mr. Kinney, and it was declared carried.

The question recurred on the motion of Mr. Merritt as amended, and it was declared carried.

The question was then put on the amendment of Mr. McDonald, to strike out the words "and the capital of the Cornell endowment fund as it shall be," in lines three and four, and insert instead "and the capital of all educational funds paid or to be"; also, to strike out all the balance of the section after the words "common school fund," in line eleven, and it was declared lost.

Mr. AXTELL—I move the previous question on the first section.

The question was put on the motion of Mr. Axtell for the previous question, and it was declared carried.

So the previous question was seconded, and the main question ordered.

The question was then put on the adoption of the first section, and it was declared carried.

The SECRETARY read the second section, as follows:

SEC. 2. All the said educational funds, as they are paid into the treasury, shall be invested by the Comptroller in the stocks of the State of New York and of the United States, or loaned to counties and towns for county and town purposes exclusively, and the State shall guarantee said funds against loss.

Mr. SEAVER—I move to strike out the word "and," in the third line, and insert the word "or," so that it will read: "stocks of the State of New York, or of the United States."

The question was put on the motion of Mr. Seaver, and it was declared carried.

Mr. WALES—I propose to offer now the amendment which I withdrew yesterday, as follows:

"The Legislature shall provide by law for investing in the bonds of the government of the United States, under the direction of the Treasurer of the State, the principal of the United States deposit fund, as it shall be paid in to the loan commissioners of the several counties."

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I withdrew that amendment yesterday at the suggestion of the chairman of the committee, because he said that that was already provided for; but a member of the Convention, a lawyer, seems to think that he was mistaken in that statement, and I leave it to the Convention for such disposition as they think best.

Mr. M. I. TOWNSEND—There was some discussion in regard to this proposition of the gentleman from Sullivan [Mr. Wales] in Committee of the Whole when this section was before us, and one gentleman seemed to suppose that the provision at the close of the first line was adequate to meet the object which the gentleman from Sullivan proposes. I understood the whole of the committee concurred in this his view, that this loan that is now scattered among the several counties of the State is very badly invested oftentimes, and a great deal of it lost, and that it would be better to make the same investment of this fund that is made of the other funds of the State. It was supposed by some gentlemen that these words, "all the State educational funds as they are paid into the treasury," provided for a contingency which is sought to be specially provided for by the amendment of the gentleman from Sullivan [Mr. Wales]; and those gentlemen expressed the opinion that being paid into the treasury was equivalent to being into the hands of the loan commissioners. I do not so understand it, sir I understand that these commissioners may re-invest the funds without ever actually paying them into the treasury; and if that be so and if it be the desire of the Convention to have these funds invested as the other funds then we need to adopt a provision such as that now proposed by the gentleman from Sullivan [Mr. Wales].

Mr. MERRITT—I understood yesterday that when the money was received into the hands of these loan commissioners it was, to all intents and purposes, paid into the treasury. If there is the slightest doubt about that we need the amendment offered by the gentleman from Sullivan [Mr. Wales].

Mr. ALVORD—It strikes me that this is a plain common sense proposition, that these loan commissioners receiving the money by way of payment upon mortgages, either by foreclosure or otherwise, are absolutely prohibited by the first part of this section from re-loaning it. These educational funds are in the treasury absolutely and cannot be re-loaned by the commissioners.

The question was put on the amendment of Mr. Wales, and it was declared adopted.

Mr. WAKEMAN—I move to amend the second section by inserting after the word "treasury" in the second line, the words "except the United States deposit fund." The object of this amendment is to test the will of the Convention with respect to withdrawing that fund rom the counties where it is now invested. Originally this fund was distributed among the several counties of the State, loaned on bond and mortgage. It is undoubtedly true that there have been losses growing out of these loans, but I would be willing to adopt a Constitutional provision making the counties liable for any loss occurring in that way, and letting that fund remain where it is now invested on bond and mortgage, so as to give the counties the benefit of the loan. I think, therefore, that this amendment should be adopted; and then I will vote for an amendment, if any gentleman will propose it, making each county liable for any deficiency occurring upon any loan that the commissioners may make of this fund.

The question was put on the amendment of Mr. Wakeman, and it was declared lost.

The SECRETARY read the next section as follows:

SEC. 3. The Legislature may provide for the payment into the treasury of money or securities for the general or special endowment of any literary or educational institution in this State; for the investment of the same, and for the payment of the interest upon said investment in accordance with the terms of the endowment as approved by the Legislature.

Mr. COMSTOCK—I move to strike out the concluding words of this section, "as approved by the Legislature." I am not sure that I know what those words mean in that connection but if they have any intelligent meaning whatever, I think it must be the endowment which a private individual may make to an institution must be approved, and may be changed and modified by the Legislature. The words are "for the investment of the same, and for the payment of the interest upon such investment in accordance with the terms of the endowment as approved by the Legislature,"—if that language has any sensible meaning, it must be what I have said.

Mr. CURTIS—Mr. President—

The PRESIDENT—Will the gentleman yield to the gentleman from Richmond [Mr. Curtis]?

Mr. COMSTOCK—I will be very happy to do so. I am anxious to know the meaning of this language.

Mr. CURTIS—I will explain what was the understanding and intent of the committee in using that language. It was intended to provide that before these moneys are paid into the treasury, and put in the care of the State, the State should understand the terms of the endowment before accepting that care; in other words, that the State should know what it is doing in regard to any special endowment. This language has no further meaning than that, as I understand it.

Mr. COMSTOCK—That interpretation is not a very obvious one, and I do not think that any body but a member of the committee who framed the section would be able to cipher out that interpretation. But if that be the meaning of the words, they are simply superfluous. I object to them, however, myself, not so much because they are superfluous, as because they are mischievous in the last degree, or at least capable of being perverted to very great mischief. The law in England in regard to charitable endowments is, that when a donation is made by an individual to any charity whatever, and the gift cannot by the law of the realm, take effect precisely as the donor intended, then, instead of going to the heirs or representatives of the donor, the king, by his sign-manual, may take up the gift, and give it to any purpose whatever; and I recollect very well a case where a donation was

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made by a benevolent individual to an educational institution, and which could not take effect by reason of the law of *mortmain* being in the way, and the king by his sign-manual gave the fund to a foundling hospital. Now, that is not the law of this State, or of this country. Here, charitable donations must take effect as the donor intended, or they fail utterly and entirely, as they should fail. There is in our State no power to modify the gift, or to divert it from the object for which it was intended, and give it to some other object. Now, according to my understanding, such a power is contained in this section. It is intended, I think, to give to the Legislature the power to modify endowments, to approve or disapprove. If that be not the meaning of it, then the words have no function whatever in this section. The section says that the Legislature may provide for the payment of money or securities into the treasury. It is a merely permissive power to the Legislature, and that is all you want. If the Legislature do not approve of the endowment, it will not meddle with it. But look further and it says that the Legislature may "provide for the investment of the same, and for the payment of the interest upon said investment in accordance with the terms of the endowment as approved by the Legislature." First, the Legislature is to approve the endowment or modify it so that they can approve it, and then the interest is to be paid over. If these words have any meaning in the section, I do not think it is a wholesome one.

Mr. M. I. TOWNSEND—I move to strike out the word "as" in the sixth line, and to insert in lieu thereof the word "if." That will not allow the Legislature to modify the terms of the endowment. They must take it as it is if they approve it, and if they do not, they need not assume control of it. This provision will not impose the burden of it upon the Legislature, if they are not satisfied with the character of the endowment, but it will not be in their power to modify it in any shape.

Mr. CURTIS—I differ from the gentleman from Onondaga [Mr. Comstock] as to these words. It seems to me that their meaning is very plain to the ordinary reader. They may be superfluous, and if they are, of course there will be no object in retaining them; but I think the meaning is very plain.

Mr. COMSTOCK—I wish to ask the gentleman from Richmond [Mr. Curtis], whether he supposes that the Legislature is to pass general or special laws on the subject, whether it is to be regulated by general legislation, or by some special act in the case of each charitable gift? If it is done by general laws, the Legislature can know nothing about the endowments in particular, and can neither approve nor disapprove.

Mr. M. I. TOWNSEND—I did not understand the amendment offered by the gentleman from Onondaga [Mr. Comstock], and I may have moved an amendment which I would not otherwise have offered.

The PRESIDENT—The motion of the gentleman from Onondaga [Mr. Comstock] was to strike out the words "as approved by the Legislature," at the end of the section.

Mr. M. I. TOWNSEND—I withdraw my amendment.

Mr. RUMSEY—This section imposes no duty upon the Legislature, and restrains no action of the Legislature. It is, therefore, in my judgment, entirely immaterial, because the Legislature may do precisely the same thing that is provided for in this section without any constitutional provision. The section, therefore, is entirely useless, and we certainly ought not to incumber the Constitution with words that have no meaning so far as regards the action of the Legislature. In the absence of a prohibition in this Constitution, the Legislature have the entire power to do with this matter just as they will, and this section does nothing to increase or to restrict that power. I therefore move to strike it out.

The question was put on the motion of Mr. Rumsey to strike out the section, and it was declared carried.

The SECRETARY read the fourth section, as follows:

SEC. 4. The Legislature, at its first session after the adoption of this Constitution, shall elect, in joint ballot of the Senate and Assembly, a superintendent of public education, who shall hold his office for four years and until his successor is appointed. He shall have such powers, and perform such duties, and receive such compensation as may be prescribed by law. The Legislature at the same session shall create a State board of education to consist of seven members; of which board the superintendent of public education, the Secretary of State, and the Comptroller, *ex officio*, shall form a part; and the other four members shall be elected or appointed as shall be provided by law. The State board of education shall have general supervision of all the institutions of learning in this State, and shall perform such other duties as the Legislature may direct. The term of office and the compensation of the members shall be prescribed by law.

Mr. HADLEY—I move to strike out the first four lines, down to and including the word "appointed," in the fourth line, and insert "There shall be elected, at the first general election after the adoption of this Constitution, a superintendent of public education, who shall hold his office for four years, and until his successor is chosen." I offer this amendment with a view of testing the sense of this Convention, as to whether the superintendent of public education, if we are to have such an officer constitutionalized, shall be elected or appointed. It seems to me that if there is any officer who should be elected by the people of the State, it is the superintendent of public education. He should be elected, I think, for the reason, first, that it is in accordance with our present theory of State government. We elect our Comptroller, our Secretary of State, our Attorney-General, and our judges, and I will add here that in twenty-three or twenty-four of the States of this Union the judges are elected. Now, this idea of going back and appointing State officers does not meet with my approval. If this officer shall be made elective, then there will be throughout this State in every school-district, an interest in choosing, the

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right man, and the trustees and the citizens of every school-district, will attend more to the primary meetings, and we will have in this office a man elected directly by the people, and having their attention expressly fixed upon him. But I do not wish to detain the Convention. Every man's mind is probably made up as to whether the office should be elective or appointive. For myself, I am entirely opposed to constitutionalizing this superintendent of public instruction. I am in favor of striking out the entire section. But if we are to have such an officer, I desire that he shall be elected by the people.

Mr. GOULD—I simply wish to ask each member of this Convention to think of the gentleman whom he would prefer to have at the head of the department having charge of the educational interests of the State. Let him fix his mind upon the man, and when he has selected Dr. Anderson of Rochester, or President White, of Syracuse, or any other educational luminary in the State, let him ask himself this further question, would such a man as Dr. Anderson or President White, go before a State Convention of any party and solicit such an appointment as this? And when he has done that, let him ask himself further, if the very man he would not desire to see at the head of the department of education, would not be just the man who would be present urging upon the Convention his own appointment?

The question was put on the amendment of Mr. Hadley, and it was declared lost.

Mr. ALVORD—I desire to renew my motion to amend by striking out of the first, second and third lines down to the word "superintendent," all after down to "appoint."

Mr. COMSTOCK—That proposition, if I understand it, goes to the whole of the fourth section, except what was specified in the remarks of the gentleman. Before the motion to strike out is put I propose an amendment with a view to perfect this plan so far as I can. I shall myself go for the motion to strike out; but first let us make the thing as tolerable as may be, in case the Convention see fit to accept it. I move to strike out all after the word "supervision," of the sentence contained in lines thirteen, fourteen and fifteen, and to insert, "of the common schools and such supervision of the other institutions of learning in this State, as the Regents of the University have heretofore exercised;" so that if the amendment prevail the paragraph will read:

"The State board of education shall have general supervision of the common schools and such supervision of the other institutions of learning in the State as the Regents of the University have heretofore exercised."

There is a breadth, and depth, and comprehensiveness in this plan of the committee which I believe has yet escaped the attention of the Convention. According to the terms of this report, it is declared that the State board of education shall have "general supervision" of all the institutions of learning in this State. The common school, the academy, the college are to be subjected to that power, and it is to be noticed that whatever power this board can exercise or will exercise over the common schools of the State, the same power is given in the same words over the academies and colleges of the State. Now, sir, to that I am invincibly opposed. I am opposed to subjecting education in the colleges and in the academies of the State to the supreme control of the State in any one of its boards, or even in its Legislature. Education in those institutions rests upon very different bases from education in the common schools. Our common school system is maintained wholly at the public expense. It is maintained by the exertion of the taxing power of the State, which, through local and general taxation, annually raises millions of money from the people for the support of that system. My impressions are in favor of that system, and I will maintain it. But education in our colleges and in our academies does not rest upon any such basis. Our colleges receive no aid whatever from the State, except those casual and rare donations which are sometimes made to them by act of the Legislature. Our academies receive but an inconsiderable support from the State. I believe the entire fund which is annually bestowed upon the academies of the State, is not more than about $40,000. Now, sir, in that lower department of education, the expense of which is defrayed entirely by the State, there is the most exact propriety in subjecting it to the supreme control of the State either through the Legislature, or through some board created by the Legislature and subject to its direction. But that reason does not hold when we come to speak of education in these institutions of learning which are supported by religious enterprise, and by donations from private individuals with which the State has no concern, and which, therefore, the State has no right to control. I object to this board and to this power, because it is unknown in the history and in the laws of the State. Our academies and colleges are not now subjected to any such control as this plan proposes, and in my humble judgment they ought never to be subjected to any such control. I take it for granted that these words, "general supervision of all the institutions of learning in this State," as I find them used in the plan of the committee, are the same in meaning as the words "supreme control of all the institutions of learning in this State." These are convertible expressions, and I suppose it to be the meaning of the provision, and the intention of this plan, to subject every educational institution in the State to the dead level of this supreme control of the board to be created by the Legislature. I say that we have no such power now in the State, and I hope the State will never claim such a power over our educational institutions—I mean those institutions where education in its higher departments is imparted. The State has no right to that control. If we look at our laws on this subject, we find that the trustees of every college in the State are to direct and prescribe the course of study and discipline to be observed in the college. We find, also that the trustees of every incorporated academy in the State have like authority to prescribe the course of study and discipline to be observed in the academy. The Board of Regents is now the only authority which exercises a general visitorial power over these institutions, but that board has no such power as

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it is here proposed to confer upon this State board of education. What is the power of the Board of Regents? It has simply the authority, in the language of the statute, "by themselves or their committees to visit and inspect all the colleges and academies in this State, to examine into the condition and system of education and discipline therein, and make an annual report of the same to the Legislature." There is no power there to mold or control the course of instruction in any of the institutions of learning in this State, and such a power ought not to reside in the Board of Regents, as it does not, and it ought not to reside in this State board of education. Why, this whole plan is founded upon a false and erroneous idea. You, sir, or I, endow an institution of learning, and in the terms of the endowment we direct the application of the funds and require a particular thing to be taught in that institution. Now, we have a right to do that. I have the right, under the laws of this State, to found an institution of my own, to incorporate myself and my associates according to the general laws of this State, and to endow the institution in my own way and manner; and when I have done so, I have the right to protest against this supreme control of the State over that institution. I would be protected by the Constitution of the United States, but for that clause which we are accustomed to insert in all charters and general laws of incorporation, that the same may be repealed or modified. But that does not change the nature of the question. What I insist upon is that institutions which are not dependent upon the State for their support, which are not founded by the State, but are the result of private liberality or private enterprise, and in many cases of religious denominational enterprise, ought not to be brought down to this horizontal dead level of control by the State. Why, sir, look at the institutions of the State which we now have, which are to be subjected to this unity of control, the same control which this board proposes to exercise over the common schools of the State—

Mr. RUMSEY—Will the gentleman allow me to ask him a question?

Mr. COMSTOCK—Yes, sir.

Mr. RUMSEY—What meaning does the gentleman attach to the word "visit" and the word "supervision?" Do those words give this board any more than the right to overlook and inspect these institutions, and have this board any power by this section except such as they shall derive from the Legislature.

Mr. COMSTOCK—Yes, sir, by the constitutional article which is proposed by this committee, they are to have the general supervision of the educational institutions of the State; whatever power they possess over the common schools, they will possess over the colleges and academies of the State also. If these words are not of the same meaning and import as the words "supreme control," then I am unable to appreciate the force of language. The mere power of visitation is nothing, that is the power of the Board of Regents. They have the power to examine, visit and report, but not the power of supervision, which is simply the power of control. The object of my amendment is to reduce the functions of the board proposed by this constitutional article, to the same measure as those now possessed by the Board of Regents.

Mr. CURTIS—Will the gentleman from Onondaga [Mr. Comstock], allow me to ask him as a professional man whether it is the accepted ruling of the courts, that the word "supervision" when used in such a connection as this, is equivalent to the words "supreme control?"

Mr. COMSTOCK—The gentleman asks me, and I answer as a professional man, if he will have it in that way, that in my judgment the words "general supervision," is nearly or quite equivalent to the words "supreme control."

Mr. CURTIS—Is it so ruled by the courts?

Mr. COMSTOCK—I do not think that precise question has ever arisen in any court. If it has I am not aware of the adjudged case. I speak of it however, as a question of the natural interpretation of language. If I have power to supervise an institution, I have power to control that institution. Is it not intended by this provision, to give the supreme control over the common schools to the State board, and do you not give the same power over the academies and colleges that it will have over the common schools?

The PRESIDENT—The time of the gentleman from Onondaga [Mr. Comstock[, has expired; but he may proceed by unanimous consent.

SEVERAL DELEGATES—Go on; go on.

Mr. COMSTOCK—Now, let us look over the State, and see what are the subjects upon which this constitutional article is to operate, if it shall be accepted and go into operation. There is not one of the colleges of our State that has been founded by the State; there is not one of them that is supported by the State; they have all been founded by private or by denominational and religious benevolence. To begin with we have Columbia College and Hobart College at Geneva. Those are colleges under the control of a particular religious denomination, the Protestant Episcopal church. They are not sectarian. None of our colleges are sectarian in the just sense of that word, but all, or nearly all, our colleges are denominational in a certain sense, in the sense that they are founded and endowed, patronized and mainly supported by particular religious denominations. That is so now. It always has been so, it always will be so, and the great work of education in its higher branches never will go on successfully in any other way. Now, let me ask any one interested in these institutions which I have named, if he would desire to subject them to the unlimited control of this board of education. Then we have the Madison University, and University of Rochester, which I believe are under the patronage of another religious denomination, the Baptists. They, too, are not sectarian, except in the sense that they are denominational. The education imparted there is not a sectarian education, and they are very meritorious and praiseworthy institutions. Now shall these institutions be subjected to the supreme control, for I still adhere to the words, of this State board of education? I might go on with other illustrations. Nearly all our institutions of learning, colleges and academies, are un-

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der some of these denominational influences. Let me put the question whether it would not be competent for this board of education to prescribe uniform text books and courses of study in all these colleges and academies? If any one says that the power is limited, let him tell me how and where it is limited in this article. I say Mr. President, that under this provision that board of education will have the power, if it chooses to exercise it, of subverting the very foundations, the very intention of nearly all the higher educational institutions of the State. Perhaps that is the design, sir, for I find it avowed in the circular sent out, calling for these petitions with which this Convention has been flooded, that the intention is to bring all these higher institutions down to the level of the common school system. Without enlarging further upon this view of the case, I repeat that this whole plan is founded upon a very false and erroneous view of the subject. Education, except in that lower department which is a matter of State care, ought not to be subjected to State control. We consider, and consider wisely and well I believe, that it is a matter of State concern, a matter of great political concern, that education in the common schools should be universal and free. And to that extent the State very properly takes care of the interests of education; but if the State will let education alone in its higher institutions and departments, it will take care of itself. There is wealth and benevolence, and enterprise enough among the people to foster, encourage and build it up. It does not want your State care or your State control. We have been told by the learned and eloquent gentleman from Richmond [Mr. Curtis] that education is a unit. Well, sir, in a certain sense education is a unit, because from the time the pupil begins to lisp the alphabet until he has reached the loftiest heights of astronomy and the profoundest depths of philosophy there is but one course of progress and improvement. So is human life a unit in that sense. But does it follow from that, that this whole course of education in all its stages should be subjected to a single control? By no means. In the different stages of progress, we have the common school, we have the academy, we have the college; and there is no reason whatever that I can perceive, why all these institutions, taking up the youth in the different stages of his education and carrying him forward—there is no reason I say, that I can perceive why these institutions should be subjected to a uniform system of State control; and I am opposed to it.

Mr. ARCHER—If the interpretation put upon the section by the gentleman from Onondaga [Mr. Comstock] is correct, the committee most assuredly made a grave error in the selection of the language used, for it was not their intention to confer by the phrase now under consideration, any power whatever except that of visitation, and it seems to me that a fair construction of this portion of the section, will lead to a conclusion entirely different from that of the gentleman from Onondaga. It is the last portion of this clause that confers the power, and it is for the Legislature to confer such powers as they please. All that was intended in the first portion of the section was to present generally the idea of unification, to give to this board of education the same powers that are now exercised by the Regents of the University over colleges, academies, and common schools, and no further than that; nor do I believe that the article, properly interpreted, would bear any different construction.

Mr. GOULD—It seems to me, sir, that the astuteness of the gentleman from Onondaga [Mr. Comstock] has very greatly overshot itself. What is the meaning of this Latin word supervision? Why, sir, put into plain English, it means simply oversight. The board of education created by this article has oversight or watch, not control over the institutions of learning in this State. What is the difficulty, what is the objection to that—that this board should watch over the institutions of learning in the State—should overlook them? Why, sir, we are taught in the old proverb, that a cat may look upon a king, and if it is the inalienable right of pussy to look upon royalty, what is the harm in allowing this board of education to watch over all the interests of education in the State, to see what is going on in every school of learning? Why, we have been recently informed by the English papers that an investigation has been made into the affairs and mode of conducting female schools in England, and it has been found that girls of eighteen or nineteen years of age, are publicly whipped, and their persons disgracefully exposed in the presence of the whole school. Now, I ask if any public or private school here should adopt that plan, would it not be the right, would it not be the duty of the board of education to look into and report the facts to the Legislature in order that laws might be enacted to prevent the practice? A person might endow a school for the training of model artists if he pleased. Now, certainly such a violation of morality and decency as that should be liable to be inspected and reported upon by the board of education; and without going so far as this, there may be great wrong done in our schools which should come under the supervision of this board. The board, although not empowered to take any action for the redress of those wrongs, should have the right to keep watch over our institutions of learning, and to report any such wrongs to the Legislature. Now, as the gentleman from Wayne [Mr. Archer] very properly says, this word "supervision" is limited by the subsequent part of the section which provides that in any action which the board may take, they shall be authorized only by the Legislature itself. I see no sort of difficulty in this section.

Mr. CURTIS—I have but one word to say upon this subject. The gentleman from Onondaga [Mr. Comstock] has very properly pointed out a defect in this paragraph. As it reads now the State board shall have general supervision of all the institutions of learning in the State. That would include every conceivable school, whether private or public, and since the gentleman from Onondaga assures us that there may be a difference of opinion as to the signification of the word "supervision," and inasmuch as the intention of the committee is plain, and as my own private conviction entirely agrees with that of the gentleman

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from Onondaga [Mr. Comstock], that the more the higher institutions of learning are separated from State control the more they will flourish. I am certainly willing for myself to change the section in such a manner as to attain what I conceive to be the intention of the committee. That is substantially done in the amendment which he proposes, and which, as I understand it, is something of this kind: "The State board of education shall have general supervision of the common schools, and shall perform those duties which are now performed by the Board of Regents." But while I agree substantially with the amendment, my objection to it is, that if it prevail, the highly honorable and respectable Board of Regents of this State will be abolished by name, and their abolition will be made constitutionally perpetual. I therefore desire that some verbal change should be made in the amendment, and if the gentleman will modify it in that particular, I individually shall have no hesitation in supporting it. As it stands however, I shall certainly vote against it, because I am not in favor of abolishing the Board of Regents by name.

Mr. VERPLANCK—Why not say plainly what you want?

Mr. CURTIS—Because I have no hostility to the Board of Regents. My argument throughout has been simply that the duties performed by it would be more wisely done in the way suggested in this report,

The PRESIDENT—The proposition of the gentleman from Onondaga [Mr. Comstock], is not germane to that of his colleague [Mr. Alvord]. This was not discovered by the Chair at the time the amendment was offered, for the reason that the gentleman from Onondaga [Mr. Alvord] did not furnish his amendment to the Secretary. The pending question is first on the motion of the gentleman from Onondaga [Mr. Alvord], to strike out the fourth section down to and including the word "law" in the sixth line, and to insert in lieu thereof "the Secretary of State shall be superintendent of public education, and as such shall have such powers, and perform such duties as may be prescribed by law.

The question was put on the amendment of Mr. Alvord, and it was declared lost.

The hour of two o'clock having arrived, the Convention took a recess until seven o'clock P. M.

EVENING SESSION.

The Convention re-assembled at seven o'clock and again resumed the consideration of the report of the Committee on Education as amended in Committee of the Whole.

The PRESIDENT announced the pending question to be on the amendment offered by Mr. Comstock.

Mr. COMSTOCK—I think that the amendment was ruled out of order at the time I offered it. It was offered under a misapprehension of the extent to which it was proposed to strike out. I offer it now in a little different form. I move to amend section 4 by striking out in line fourteen the words "all the institutions of learning in this State" and inserting in lieu thereof the words "the common schools of the State." If this amendment shall prove acceptable to the Convention, it leaves the board of education in the article, if the Convention shall determine to constitute such a board, and it confines that board to the common school system of the State leaving open the question of what number the board shall consist. In the mean time, I hope to rally to the support of this amendment all those who are opposed to placing the higher institutions of learning in the State under the unlimited control of the board of education now proposed to be created. I gave the reasons this morning as well as I was able, briefly, why in my judgment, the colleges and academies of the State ought not to be subjected to State control, and ought not to be merged into one system with the common schools of the State. For the reason which I then gave, as well as I was able, I hope that this amendment may prevail.

Mr. CURTIS—I wish to offer a substitute for the one proposed by the gentleman from Onondaga [Mr. Comstock] which I will read for the information of the Convention: "The Board of Education shall have general supervision of the common schools, and such care of all other institutions of learning which receive aid from the State, or which now are or hereafter may be subject to State visitations as the law may prescribe. The term of office shall be determined by law." My object in offering the substitute is this: it seems to me to be the desire of many gentlemen on the floor to leave the general relation of the State to the various institutions of learning to which it has any relation whatever at the present time undisturbed. It is however, the desire of the committee that these relations shall all be subject to one head and therefore, specifying what these relations are, my amendment provides in detail and serially for the common schools and for the academies and for the colleges which are the only institutions over which any State care is now exercised, and it retains by name the specific character of the care of which is exercised by the State. Therefore, sir, I shall vote for the substitute which I propose in place of the substitute offered by the gentleman from Onondaga [Mr. Comstock] which will secure the present relation of the State to the various institutions precisely as it now exists. The section already adopted secures to academies the revenues of the literature fund. But the change which is worked by the substitute which I have now offered is that all this care is vested in one supreme department, and therefore all those who believe with me, and who agree with me in the general course of the discussion that has taken place will, of course, see that the intention of the suggestion made by the gentleman from Onondaga [Mr. Comstock] is to leave precisely where it is now what the committee had in view slightly to disturb.

Mr. LARREMORE—I do not see that the substitute proposed by the gentleman from Richmond [Mr. Curtis] accomplishes the object intended by the gentleman from Onondaga [Mr. Comstock]. It virtually leaves the academies and higher seminaries under the supervision of the same authority that has charge of the common schools. I

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understand the object which the gentleman from Onondaga seeks to accomplish is to confine that authority to common schools, and, therefore, in that view I shall be compelled to vote against the substitute of the gentleman from Richmond [Mr. Curtis].

Mr. CURTIS—My friend from New York [Mr. Larremore] will understand that the proposition of the gentleman from Onondaga is diametrically opposed so far as the unity of care is concerned, to the one he offered this morning. This morning he proposed a board of education that should also discharge such duties as are now performed by the Board of Regents. No gentleman who feels with me, of course, can support the substitute of the gentleman from Onondaga [Mr. Comstock].

Mr. COMSTOCK—The amendment which I now offer is not antagonistic to the one that I offered this morning; but it is a little less extensive in its reach. I will explain the situation in case my amendment should be adopted—if this amendment shall be accepted by the Convention—and if the article be afterward adopted there will be, in place of the present superintendent of public instruction, a State board of education, of which the superintendent will be one, that board to be constituted of such numbers as we may hereafter agree upon when we reach that question. The functions of that board will be confined, without any change in the laws of the State, to the common schools, as the functions of the present superintendent of public instruction are confined to that sphere. But the whole effect of the proposition will be that the State board shall have the supervision of common schools, and shall perform such other duties as the Legislature may prescribe. That is the whole of my proposition. Now, Mr. President, that constitutional provision, if we shall adopt it, leaves the Board of Regents in existence with the care and management of the State library, and with such power of visitation of the literary institutions of the State as they now have. It leaves that board undisturbed. This I desire the Convention clearly to understand, for it is my meaning; but the provision will confer a power upon the Legislature to devolve the functions of that board, if it shall see fit so to do, upon the board of education to be created by this Constitution. That power will arise and may be exercised under the words "and shall perform such other duties as the Legislature may prescribe." It will be, therefore, for the Legislature hereafter, if it shall be thought wise and expedient so to do, to abolish the Board of Regents, or to take from that board any portion of its functions and confer them upon the board of education. The Convention will not do it if the proposition is accepted. The Convention will not do it, but the power will be left in the Legislature to do it if it shall be thought wise so to do. Now, I object to the proposition of my friend from Richmond [Mr. Curtis] because it does not really change the original character of his plan as reported to this Convention; because the board is still to exercise a general supervision over the institutions of learning; the power is conferred upon the Legislature in terms altogether too broad and sweeping for the benefit of these institutions and for the welfare of the education in its higher branches. I repeat that, for the reasons which I have endeavored to state to the Convention, the educational interests of the people in the higher departments of knowledge are not a matter of State concern, and, being a matter of private liberality and of private endowment, the State should touch them just as lightly as possible. It is all very well to have some authority in the State like the Board of Regents, or like this board of education, if the Legislature shall see fit hereafter to substitute it; I say it may be all very well to have a power of visitation of these institutions to see that nothing is going on in them contrary to the peace and good order of the State; but while the laws of the State are observed in these institutions—while nothing indecent or unlawful is going on in them—I insist that the State should keep its hands from them. I believe, sir, and it is a solemn conviction in my mind, that higher education will never flourish unless the State lets it alone. What is the amendment of my friend from Richmond [Mr. Curtis]? It is that if one of these institutions of learning shall receive a dollar from the State, it shall be subject absolutely to the control of the State. An institution cannot go to the State and ask for one hundred dollars, or the State, in its liberality, give to it a hundred dollars, without subjecting it to the absolute control of the State board, if the gentleman's amendment shall become a part of the organic law. This is the scope of the amendment and it is upon that ground that I object to it as not essentially changing the character of his original proposition.

The question was put on the amendment offered by Mr. Curtis, and, on a division, it was declared lost, by a vote of 27 ayes to 31 noes.

The question then recurred on the adoption of the amendment offered by Mr. Comstock, and it was declared carried.

Mr. VERPLANCK—I now renew the motion I made in Committee of the Whole to strike out of this section all after the sixth line. It will be observed that the chairman of the Committee on Education claimed that there should not be two boards of education, and that if the board proposed in this article was adopted the powers and duties of the Regents of the University should be transferred to the new board, so that there should not be two boards of education. The Convention having refused in effect to take away from the Board of Regents their present powers, the chairman of the Committee on Education [Mr. Curtis] and his friends, I trust, will not insist upon the adoption of the section under consideration.

Mr. FERRY—Inasmuch as I expect to vote for this amendment, on the motion to strike out offered by the gentleman from Erie [Mr. Verplanck], I desire to state the reason briefly why I do so. I have no very certain opinions of the merits of this controversy which has occupied the attention of the Convention for some time past. My reason for voting to strike this out is, because I think the time inopportune to make the change that is contemplated here by the Committee on Education, which has reported this section. Unfor-

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tunately, a controversy, and one which has become somewhat angry, has arisen in regard to abolishing the Board of Regents. I have no well defined opinion as to who is to blame upon this thing. I have no charges to make against any body for it. It is unfortunate that the dispute has occurred; but that fact, to my mind, renders it inexpedient for this Convention to take this action at this time. I wish to say, in defense of the position I occupy, that I have great respect for the action of the committee. I believe that in their labors they have been assiduous and devoted, and that they have done their work well; but I object to adopting their recommendation for the reason I have stated. I believe it to be better that the Convention take no action when there is no necessity, by which a weight might be placed upon our labors in endeavoring to carry them through the ordeal which they have to pass before the people. If I had no doubt — if my opinion was clear either upon the one side or the other—then I should stand by it; but not deeming it very important I think we had better leave the matter where it has been left. Nothing has been more frequent than for me to hear among my constituents statements in regard to the length of the time that has been occupied in our labors, and they very much fear that the State Convention has undertaken to do too much; that they have laid out too large a work instead of confining themselves to the manifest wants of the present Constitution. To some extent there is truth in these criticisms. At any rate that conviction has become deep seated in the minds of the people, and I have respect enough to regard it, at least so far as my action in this matter is concerned.

Mr. LARREMORE—As a member of the committee I desire to make an explanation in reference to what might be regarded as a seeming inconsistency on my part in reference to the motion I advocated this morning. In the position in which the question stood this morning I took the ground that we should not have two boards in reference to the educational interests of this State. The Board of Regents have now a supervision of the common schools; and if the proposed board were created the common schools would have to report to that board and we should have two boards having control. Inasmuch as we have determined to retain the Board of Regents I shall be compelled to vote for the motion to strike out.

Mr. CURTIS—The Committee on Education in reporting this article proposed no change in the State care but only in the limit of its exercise. It was with that view they made the suggestion for a State board of education. By accepting the proposition of the gentleman from Onondaga [Mr. Comstock] the Convention has passed upon that question. It has decided that it will not make the proposed change in the care of the educational institutions of the State. Having proceeded so far it would be folly of course for the committee to continue this debate, and I therefore trust that all those who with me voted in favor of a State board of education, in order that all the various institutions of education might be under the charge of that board, now that the Convention has decided to have no such board, will abandon the support of the section and vote for the amendment of the gentleman from Erie [Mr. Verplanck] to strike out.

The question was put on the motion of Mr. Verplanck to strike out all of the section after the sixth line, and it was declared carried.

Mr. FOLGER—I move to strike out the remainder of the section not stricken out on motion of the gentleman from Erie [Mr. Verplanck].

Mr. MERRITT—That is doing away with the appointment of the superintendent of public instruction.

Mr. CURTIS—I hope the amendment of the gentleman from Ontario [Mr. Folger] will prevail.

The question was put on the motion of Mr. Folger to strike out the remainder of the section, and it was declared carried.

The SECRETARY proceeded to read the fifth section of the report by the Committee of the Whole, as follows:

SEC. 5. Instruction in the common schools and union schools of this State shall be free, under such regulations as the Legislature may provide.

Mr. BARTO—I propose an amendment to this section by offering the substitute found on page 599 of the Journal, as follows:

"SEC. 5. The Legislature shall not impose upon the people of the State, for school purposes, a greater tax, in the aggregate, than one-fourth mill upon the dollar in any one year."

The sphere and duty of government is the protection of the citizen in his person and property, and so far as it is necessary to use the citizen's money to furnish him protection of person and property, government has the right to take by taxes his money, but according to the theory of the founders of our institutions, government can go no further. Says a distinguished writer:

"The public, the government, are but aggregates of individuals, and no quality, power, or right resides in the aggregate which does not previously exist in the component individuals."

Government is not a true and real source of any thing; it is an agency combining and directing powers which originate elsewhere. It seems absurd, but no less needful, to repeat, that every penny of taxes which it pays, whether to the army, to the judges, to a school, or to a picture gallery, it first receives from somebody. Hence arises the question: all these receipts being enforced, has the government a right to take a penny from John to pay for the teaching of William's son? Is any such agency included in the objects for which government is appointed? It neither pays for the teaching of William's son with money it has earned, nor with goods which it has created, but with either the money or the goods earned or created by somebody else, and it takes it, in the last necessity, by force. Where is the warrant? The answer, and the only answer made, is; that it is necessary to educate to make secure person and property. The answer is more specious than wise, it being impossible to show that mere education makes a man better. The experience of those nations in Europe where are established free schools, and where compulsory attendance is enforced, and where statistics show

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there are scarcely none who are unable to write and read, and thoroughly instructed in the elemental branches of education, notwithstanding their free school education, in immorality and the vices of mankind, they are far in advance, being the most immoral and vicious. Proving that mere education does not prevent crime and vice. It may make a villain or rogue more adroit. It would be a strange claim to say that Monroe Edwards or Sanford Conover were better men than rascals of less or no education. If the claim was for religious education, there would be more reason and force in the argument, but we are so divided in religious sentiment that no one asserts or suggests the right of taxation for the purpose of building churches, and supporting teachers of religion. Besides, the experience of the world has shown that religious establishments flourish best where individual enterprise furnishes the money. The cry of free schools, as if they were free from burdens, and the name would make them free as the air we breathe, or the speech we indulge in, has a very pretty sound, but when we feel and estimate the millions of taxation it causes, and the recklessness with which the money is spent, seems to an overburdened people, to bear the impress of a far different name than *free*. "The property of the State must educate the children of the State," is a communist idea, that to many has the wisdom of an adage—and might be such if the State had any children, and could exercise the functions of paternity and maternity. But the State has no children. The child belongs to the family. The family is utterly ignored under such a theory. The father and mother of the child have no duties to perform, all are usurped by the State. There is nothing left, provided this section stands, and is fully carried out, to the parent, but the begetting of the child, and after birth the State is to take them and bring them up to religion or irreligion, as the majority may declare. Are we prepared for such a doctrine as this proposed by the committee? Free schools made so by enormous taxation, forced from the people, and free attendance of children forced upon the parent. If this is freedom, in what do we differ from monarchy? Only the monarch is the tyrant, instead of the majority. No, sir, the State cannot thus usurp the sphere and duty of the parent. The State by and through its hired and disinterested agents, can never and ought never to take the place of the parent. Who has the greatest and most abiding interest in the education of the child? Is it not the parent? Says John Locke, in his essay upon government: "The power that parents have over their children, arises from that duty which is incumbent on them, to take care of their offspring during the imperfect state of childhood. To inform the mind and govern the actions of their yet ignorant nonage, till reason shall take its place, and ease them of that trouble is what the children want and the parents are bound to." When the day comes that the children of the State are given up to the care of the superintendents of public instruction and commissioners of schools, we may bid farewell to religion, virtue, freedom and education itself. Leave something for the family if you would retain in our land the freedom and virtue we have left. Give the family its duty, and let that duty by the family be performed. If poorly, it will then be better done than by State agents or agencies. All appreciate the importance of education; and the importance and value set upon it led the Governor of the State, the first year after the adoption of the Constitution, to recommend aid in establishing schools throughout the State. The design being to encourage the people in every locality to build school-houses and by furnishing the opportunity and paying a small portion of the expense by the State at large and equal amount by the locality—and the bulk by the individual, availing themselves of the advantages and thus by a small aid from the State the originators of our school system sought to promote education. Our fathers appreciated every thing that cost them labor and effort—the value of the thing being generally in ratio to its cost. Hence they never thought of giving or making education free, regarding it as every thing else if free, and without cost to recipients, comparatively worthless. All were to be given at small expense the rudiments of an education, and for this purpose and this alone State aid was given, and thus stimulating the desire in all to acquire knowledge rather than to give it to them without cost or effort. I think they were wise in not going further, and only erred in departing from principle; and that I may not misrepresent the men who gave character and from whom we derive every thing that is valuable in the common school system, and because they have said for me and with more force on account of their learning and experience, I propose to read from their reports short extracts. I shall read from reports of the following superintendents of common schools: Hon. Azariah C. Flagg, Gen. John A. Dix, and Hon. John C. Spencer—three men who have distinguished themselves in every department of public affairs in which they were placed—men who as I think, wisely refused to degrade our schools to a pauper system. They felt it was the duty of the father to educate his family, and did not wish to relieve him of the responsibility. They knew a State system, controlled and managed by men seeking place and salaries, would dwindle and become sickly under management that is interested only in drawing salaries and increasing emoluments and power in the hands of men who really care little about education except as it pays in money, place and power. I cite first Secretary Flagg's report on schools in 1832:

"Our system happily combines the two principles of a State fund and a town tax. Enough is apportioned from the State treasury to invite and encourage the co-operation of the districts and towns, and not so much as to induce the inhabitants to believe that they have nothing more to do than to hire a teacher to absorb the public money. * * * * When if the whole expense was provided by a State fund, they would allow the trustees to receive and expend the money, as if it was a matter which did not interest the great body of the inhabitants of the district. The common school system of this State is founded upon the principle that the public funds shall be applied to the payment of the wages of teachers of the district schools, in all cases where the inhabitants of a neighborhood will tax them.

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selves for the erection of a school-house and furnishing it with necessary fuel and appendages."

Says Hon. A. C. Flagg, Secretary of State, in his report in 1831, in reference to two systems of schools, free or inhabitants paying part:

"An eminent individual has pronounced that system the best where a State fund is provided as an inducement to the inhabitants to organize districts, and which at the same time requires such a local tax as will command the attention of the inhabitants and excite an interest in the district operations."

And adds a note:

"Of the three modes of providing for popular instruction—that in which the scholars pay every thing and the public nothing, that in which the public pays every thing and the scholars nothing, and that in which the burden is shared by both—the exposition given by Dr. Chalmers * * * in favor of the last appears to us unanswerable. When the people know that they can get their instruction for nothing they care very little about it, and are so apt to wait till the proper period for education be gone, without seeking it at all, that we perfectly agree with this most accurate observer of the habits of his countrymen, that 'one consequence of charity (or free) schools with us has been a diminution of the quantity of education."

Says Hon. A. C. Flagg, in his report on schools, Jan. 7, 1833:

"There is some difference of opinion among the friends of universal instruction as to the mode of providing funds for maintaining the school; which is best adapted to the accomplishment of the object. Of the three modes of providing for popular instruction—that in which the scholars pay every thing and the public nothing; that in which the public pays every thing and the scholars nothing; and that in which the burden is shared by both, Dr. Chalmers, in his considerations on the parochial schools of Scotland, gives a decided preference to the latter mode which is the system adopted by the State of New York. This system offers to each neighborhood a small sum yearly as an inducement to the inhabitants to tax themselves and to establish and maintain a school. The sum distributed is not so large as to induce a belief that the inhabitants have no exertions to make themselves; on the contrary, it is coupled with such terms as to require a school-house to be erected and a considerable sum to be expended, before the district can participate in the public fund; and this fund, as the returns show, pays so small a share (only one-eleventh of the school expenditures), that there is a continued necessity for individuals to tax themselves in order to keep up the school. This feature in our system, which authorizes district taxation, and which requires individuals to pay beyond the amount received from the public, has a beneficial influence upon the school and all the district operations. The power given districts to levy taxes upon all property of the inhabitants, for school-houses, repairs, appendages and fuel, induces a punctual attendance of all the taxable inhabitants at the school meeting; those citizens who have most at stake in the district are induced to act as trustees, in order to secure themselves against improvident taxation, and all the ills of a careless administration of the district affairs; and even the persons who patronize the school are induced by the assessment to send their children with more punctuality in order to get an equivalent for their money; when if the whole sum was paid by the State, these same persons might neglect the school as a matter with which they had very little concern."

And in a note the Secretary commends this remark:

"We know from common and universal experience that little interest is felt in that which demands neither expense nor attention."

The Secretary further adds:

"The amount distributed from the school fund of this State has been eminently serviceable in arousing the public attention, and in affording an inducement for the establishment of schools, when otherwise they might have been neglected. This is all that can be beneficially done by a public fund."

Gen. Dix, Secretary of State in 1834, says in his report on schools:

"Experience in other States has proved what has been abundantly confirmed by our own, that too large a sum of public money distributed among the common schools has no salutary effect. Beyond a certain point the voluntary contributions of the inhabitants decline in amount with almost uniform regularity as the contributions from a public fund increase."

He says further in same report:

"The organization of the system is complete; the public fund secures to it annually a sum entirely adequate to call forth exertions from those on whose voluntary contribution its support mainly depend."

Gen. Dix, in his report in 1835, in discussing the system of free schools in Prussia, says:

"It has indeed been said that in establishing systems of public education, the government and not the people must give the impulse. But however true the observation may be of other countries, experience has shown that it has no application to our own. * * * It is hardly necessary to say that the leading features of such a system are wholly incompatible with the genius of our institutions. * * * It was for a long time contended by the most profound writers that the support of religious societies could not be safely intrusted to the voluntary contributions of the people. But our experience has completely overturned the arguments on which this fallacy is founded, and it gives the strongest assurance that the same enlightened sentiments which have so liberally sustained the established systems of religious worship and instruction will, with equal liberality, sustain those systems of early moral and intellectual cultivation."

Same officer, Gen. Dix, says in his report in 1836:

"If the expenses of the common school system were all defrayed by a public fund and by property, it is apprehended that the worst effects would ensue. A man with a large number of children may sometimes feel the expense of their education a burden. But his contributions for the very reason that they are made with some difficulty, give

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him a deep interest in seeing that the affairs of the district are managed with economy and prudence. The effect of the present mode (1836), of providing for the expenses of the system, is undoubtedly to surround it with interested and watchful observers, who will be vigilant in detecting abuses and in seeking proper redress.

In same report he says:

"The Prussian system is maintained upon a plan very similar to ours, so far as expenses are concerned. The government pays something toward the support of schools. The property of the vicinage pays something more, and the residue is paid by those who send their children to school."

Gen. Dix says in his report in 1838:

"The common school system of this State has been carried to its present high degree of excellence principally by persuasion, by appeals to the interest of the inhabitants of school districts; and it is believed that the improvements of which the schools are susceptible may be secured by a continuance of the same policy. To change a system of measures which has worked so well, for compulsory enactments, would be unwise; nor is it deemed advisable to impose on the inhabitants of school districts any further burdens.

Gen. Dix, in his report in 1839, says:

"The common school system of this State is of comparatively recent origin. The first law authorizing the establishment of common schools was passed about twenty-six years ago. In the management of the economical and pecuniary affairs of the district there is nothing to be desired. Greater regularity in the administration of this part of the system cannot well be fancied."

John C. Spencer says in his report of 1840:

"While public beneficence is bestowed in such a degree as to stimulate individual enterprise it performs its proper office; when it exceeds that limit, it tempts to reliance upon its aid, and necessarily relaxes the exertions of those who receive it. The spirit of our institutions is hostile to such dependence; it requires that the citizens should exercise constant vigilance over their own institutions as the surest means of preserving them. A direct pecuniary contribution to the maintenance of schools identifies them with the feeling of the people, and secures their faithful and economical management. A reference to the condition of the free schools and other institutions of learning in England, which have been overloaded by endowments, will exhibit not only the jobbing peculation which has perverted them from the noble objects for which they were designed, but will show that when the government and wealthy individuals have contributed the most, the people have done the least either in money or effort; and that instead of being nurseries of instruction for the whole, they have been almost exclusively appropriated to the benefit of the few. * * * These schools were not of the people; they did not establish them, nor did they contribute to their support; and of course they regarded them as things in which they had little or no interest. In the State of Connecticut the large endowment of the public schools produce lassitude and neglect, and in many instances the funds were perverted to other purposes to such an extent that an entire charge in the system became necessary. Free schools partake so much of the nature of charitable institutions that those who can possibly afford to educate their children at select schools will do so in preference to sending them to the district schools for gratuitous instruction; and thus a practical distinction would be created between the children of the republic, hostile to the spirit of our government and inimical to those great feelings of equality among all our citizens which constitute genuine republicanism. In the cities, where there are large numbers who would not be instructed at all if free schools were not provided, the evil must be encountered as being less in degree than that of total ignorance But in the country districts, such destitution merely exists, and when it does provision is made by law for gratuitous instruction in each particular case."

John C. Spencer, in report of 1841, says:

"The superintendent retains the doubt expressed in the last annual report, whether this capital at present needs any provision for its enlargement. He does not believe that the public schools could be made charitable institutions, with any benefit to them or the community. While the means of providing education for the indigent, and of sustaining individual enterprise are thus abundant, the payment by those who are able, of a small remuneration for the instruction of their children, will induce that constant vigilance which is essential to the preservation and improvement of the system. The idea of gratuitous education comes from, and is better adapted to those countries where the working classes are impoverished by the taxation, in various forms, by the government, which, having thus rendered them dependent, degrades them by its bounty as a compensation for its exactions. With us, the rewards of labor are left with those who earn them, and they are thus rendered able to provide for their wants without being indebted to the government; and that personal feeling of independence which places men on an equality, is preserved as the foundation on which free institutions can alone rest. The schools to which a citizen has contributed become the objects of his solicitude, and their faithful and economical management is thus secured. It is believed that the provisions in our system, which require that indigent persons shall be exempted from all charges for the tuition of their children, and yet demand, from those who are able to make it, a compensation to the teacher, rendered inconsiderable by the public benefactions, have attained the happy and exact medium adapted to our habits and institutions. The exemption is silent and quiet, the feelings of none are injured; and while our schools are really free to the poor, they are not confined to them, nor are they eleemosynary, but children of all conditions there meet and mingle as they are to meet and mingle in after life, on terms of equality."

These, sir, are the opinions of the learned men who gave to our common school system its character, and brought it to the condition in which it was praised by all; a system which from many thousands who failed to avail themselves of its advantages in 1815, was so stimulated that the entire children of the State were brought into the

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schools in 1841, and our schools continued to prosper until too much aid was given, and since then the schools have declined and continue to decline. A pauper system may and perhaps does work well in our cities, but is not acceptable or productive of good results in the country. I am informed, however, by men, original advocates of free schools in our cities, and who have been long connected with their boards of education, that even there the system is a failure and ought to be changed. The money raised by taxation is foolishly and often corruptly spent. Parents have lost all interest in the schools, and they must ultimately be a disastrous failure. We are admonished of the difference between schools under governmental patronage and management and those under the management of the people, without patronage, by the first schools established in Virginia and Boston. The first school in Virginia was established by government, with a princely endowment, and fell through, while the school in Boston, established by the people, without patronage, has continued to widen its influence. It is true that latterly they have had school funds and school systems in some parts of New England, but we have the testimony of some of her wisest and best men, for saying that they have not profited by the change. Hobart College, of this State, and several other of our institutions of learning in this country, have tried the experiment of making them free. Instead of increasing the number of students the attendance became less and less, until they were oblired to charge for tuition. Students and parents alike were adverse to a charity or pauper institution, and would not patronize. A series of questions were presented to the superintendent of public instruction by resolution of the Convention early in the summer, the answers to which would show, if we could get them, that the ratio of attendance upon our common schools has decreased in the ratio of aid given. The superintendent, as is his custom, declines to answer the questions, upon the ground he has not the time to do so. He cannot see the value of an exhibit showing what is accomplished and what is failed to be accomplished—that our schools, with aid given, to a certain extent improved in efficiency, but after that limit was reached they have declined in efficiency. He has abundant time to spend in attending State, county and ward conventions, but no time to tabulate information showing his management a failure. He is engaged in running the political public school machine. His clerks can spend their time in stumping the country prior to an election, and get up petitions and circulate to influence the Convention, but no time to give us facts upon which to predicate our action. I hope, sir, we will not authorize our State Legislature to raise money by taxation to make our schools free: first, because it is wrong in principle; second, because by it education is not promoted, and, third, because the State will not, as a State, so well perform the duty as the individual citizen. Another, and fourth objection is, that if your Constitution contains this provision, it will be rejected by the people. The committee who have reported this article it seems to me, do not apprehend the active and determined hostility this section of their article will arouse among the people in the country districts. This question has twice been before the people, by a law submitted to them in 1849, and again submitted in 1850. The law was adopted by the people in 1849 by a very large majority. In 1850, excluding the cities, it would have been rejected by about 60,000 majority. The vote stood, in 1860, in the whole State:

For law—or rather against repeal, ...	209,947
For repeal, ...	184,208
Majority against repeal	24,939

The three counties of New York, Kings and Albany gave over 53,000 majority for the law, and the six counties of New York, Kings, Albany, Erie, Dutchess and Onondaga in each of which counties there are large cities, gave a majority against repeal of over 63,000. Notwithstanding the majority in the State against repeal; the justice of its repeal and the injustice of forcing a pauper system on the country districts caused its repeal by the Legislature. The burdens of taxation are now so much greater than they were in 1840 and 1850 that it would seem apparent to all that a provision entailing upon the people such a load of taxation for all time could not with any possibility receive the sanction of the people. I can assure the committee that the opponents of this provision will use all their efforts to defeat a Constitution containing so objectionable a feature. There is another objection to the section as reported by the committee. The section reads as follows: "instruction in the common schools and union schools of this State shall be free." How or in what manner free? They have always been free for all children to attend them. And no one proposes to change. How then are they to be free?—from taxation, or rate bill? How is this word free to be understood? The proposition should be clearly stated and to explain the intention of the committee the words "shall be free," should be stricken out and the words "shall be supported by taxation" inserted, so that the section will read:

"Instruction in the common schools and union schools of this State shall be supported by taxation under such regulations as the Legislature may provide."

Thus you state the question honestly and fairly and the Legislature and the people can understand what is meant. The word free does not express any such idea as I suppose they intend. I may be wholly mistaken, and if it is intended by the word to say that we shall have schools supported without, or free from taxation, I hope the chairman will consent to an amendment clearly expressing such intention. My amendment proposes to reduce taxation in the State between two and four millions of dollars, and yet give the schools more State aid than was deemed desirable by the eminent men whose opinions I have just read. Is it not wise for us to make some efforts to relieve the tax payers of the State? There have been efforts made to increase debts in this Convention. There have been efforts made to devise means to get hold of more property of the tax payer to tax, but no effort yet to reduce the

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burdens of the much abused "public goose" the *tax payer*. no one has any sympathy for him. He must bear all the load of debt and taxation, and the only reward is a kick because he does not yield up more of his substance for taxation. I think my amendment is a step in the right direction—less taxation. I hope it may be adopted or that the section may be stricken out.

Mr. KINNEY—No question, Mr. President, has been before this Convention which so directly and so seriously affects the great mass of people in whose behalf governments are instituted, as the one now under consideration. Having recognized the principle that all political power resides in the people, and that they, to an almost unlimited degree, rule in this land, we cannot too carefully guard in the fundamental law the moral and intellectual character of that governing power; we cannot be too watchful over the purity of the fountain of our State and national politics and of all State and national institutions. Governments necessarily partake of the characteristics of the governing classes. The institutions of a State are but the crystalized ideas of the people who govern the State. Those States which have attained the greatest success in all the elements of successful governments are those in which the governing elements have been the most thoroughly and universally educated. Believing in the principle of the equality of human rights, and having established thereon our system of popular government, we are under peculiar obligation to carry out that principle to its logical and legitimate conclusion, by making that system of government as perfect as possible by perfecting its source and working power. Monarchies are perfect, as monarchies, only when the monarch himself is a perfect monarch. Republics are perfect, as republics, only when the ruling power, the people, are perfect. When we consider that the true and legitimate end of all government is the utmost development and perfection of humanity, then we must come to regard monarchies as the most imperfect and unreliable of all governments. We see them, then, as pyramids standing upon their apex, and upheld in that unnatural position, not by the internal and eternal principle of right and justice, not by the moral sense of the people, but by the external propping and bracing of the bayonets which may be commanded to that end. We are apt, in viewing such governments from a distant stand-point, to mistake their great brilliancy and military display for real strength and success as legitimate human governments. In truth, they are the greatest possible failures when the true ends and objects of governments are considered, viz.: the protection of all their subjects in the enjoyment of all the rights which their Creator has bestowed upon them, and the ultimate development of a perfect humanity. Modern wise men now tell us that the pyramids of Egypt were not built for the glory of the Pharaohs, but as a great stroke of national policy to give employment, wages and bread to the people. We are also told that Paris is not only the "glory of France," but that "Paris is France," and that whatever contributes to the glory of Paris contributes to the glory of France. And this patronizing adulation comes from Americans now worshiping at the feet of Napoleon III, who say his triumphal arch, which cost several millions, evinces wonderful political and economical sagacity, for while it added to the glory of Paris, and therefore to the glory of France, it also gave employment, wages and bread to the people. Now, I can conceive how the true ends of government could be attained, the laborers of Egypt and France get employment, wages and bread, and the glory of those proud nations be maintained and even magnified without such an aimless and fruitless waste of labor and wealth The labor and wealth sunk in the pyramids and triumphal arches might have been so employed as not only to give employment, wages and bread to the people, but also to have erected thousands of comfortable and permanent dwellings for the poor, hospitals for the sick, and schools for the ignorant. And when the American toady abroad should be constrained to ask for the monuments to the glory of the Pharaohs and Napoleons, the people could say, as did the cockneys of London, when asked for the monument to Sir Christopher Wren, "look about you and you will see them in the comfort, intelligence and happiness of the people." To those taught to regard governments as instituted for the benefit of some privileged class which have usurped the right to govern, and that the great mass of mankind were made to contribute to the same end by their slavish toils, such manifestations of grandeur and glory may seem eminently proper and befitting; but in the American Republic, where, theoretically, at least, "no man liveth unto himself," they are sadly out of place. As we have no superior classes here ruling by divine right, so here the people stand upon the most perfect and absolute equality, and rule without hinderance or restraint from any power not of their own creating. Their greatest boast is that their government guarantees to every man the exercise of the largest natural liberty, and the enjoyment of every natural right not inconsistent with the welfare of the whole. In short, that the greatest glory of the government consists in developing the broadest and most perfect humanity among all classes and conditions of men. While the monarchies of the world boast of developing a few great men, and of building monuments and triumphal arches to their greatness, our own republic boasts that it develops and perfects humanity, and points to a nation of good, wise and happy people as the monument of its greatness. Governments controlled by the few conserve the interests and greatness of the few. Governments controlled by the entire people must necessarily subserve the interests of the entire people. And as the aims of our government are broader, and its designs deeper in the work of developing the humanity of the race, so will its results be greater, and the monument of its greatness be the more glorious. It is true that we see not yet the full fruits of popular government; but equally true is it that our Republic is but in its infancy, and that as yet no system for the free education of all the people has been put into practical operation. The elaborate outlay for the education of the governing elements of Europe, drawn from the earnings of

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the producing classes, perfect them in the peculiar work of governing for their own special interest and glory; and when a tithe of it shall have been devoted to the education of the governing element in this country (the people), then, and not till then, will have been laid the chief corner stone of a perfect and successful republic. Our fathers established a government based on natural laws, so far as it was then deemed practicable. They dug and brought to light those natural rights of man which had so long been ignored or covered up by the prevailing idea of caste, and to some degree, at least, incorporated them in the organic laws. Thomas Jefferson sounded the key-note when he declared that all men were created equal; and that governments derive their just powers from the consent of the governed Self-government is founded in nature; it inheres in the very constitution of man; is a part of the law of his being; and all the laws of society affecting the question of government are but agreements among the people who constitute a State regulating the exercise of a natural right. And having recognized the supremacy of the natural laws in the construction of a free government, we stop short of carrying that recognition to its logical conclusions by ignoring some of the most important laws of man's being. We appropriate money beyond the power of computation in ministering to his mere physical wants. We spend millions upon millions upon canals, railroads, and other avenues of commerce; we pile up laws at the rate of more than a thousand a year to aid in the accumulation of wealth, and surround that wealth, when acquired, with every conceivable guard and protection. The energies of the State are expended in the development of the wealth that perishes, while scarcely a feeble spasm is devoted to the truer and more legitimate end of government—the development of man. The parent is forbidden by penal laws to utterly neglect the physical wants of his children, but no such guard is set over the starvation of their minds. We build poor-houses, asylums, and various other charitable institutions, support them by taxation, donations, and other devices for raising the necessary funds, for the very laudable purpose of clothing the naked and feeding the hungry; but where in the land have we a charitable institution, the leading and distinctive feature of which is to educate the ignorant, and fit them for useful citizenship? If a very limited degree of education accompanies the other provisions, it is but an incident, and not the leading feature. Physical comforts are commendably provided for, while the mental food is withheld. In this land mind rules and mind governs, and every law of man's being points to the development of mind as the chief end of earthly existence, and an important end of earthly governments. And to this end we propose to implant in the fundamental law of this State, as the important prerequisite of the success of man as an individual, and of this government as a free government, the provision which shall make the schools of the State free to the children of the State. Why not? No gentleman who regards the ulterior end of all government to be the prosperity and happiness of the entire people, unless he be blind to the adaptation of means to ends, can answer the short interrogatory: why not? Can any thing sound or logical be interposed between free government and free education? You may as well withhold food from the child and expect it to become a man. You may as well attempt to divorce cause and effect. Can any one conceive it the duty of the State to enforce laws for the punishment of the legitimate consequences of ignorance and degredation, and not equally the duty of the same power to employ the legitimate means of removing that condition of ignorance and degredation? Do gentlemen say that the want of that moral and intellectual development of the people which the common schools afford, is not fruitful of crime and its consequent miseries? Let them but open their eyes and look about; let them consult their own every-day observations and experiences; let them examine the statistics at their command, and they have overwhelming answers to all such propositions. Long and careful study of prison statistics satisfy me that thirty-three per cent of the criminals of our country may be ranked as uneducated, and they may bear the stronger term of the grossly ignorant people of the country. English statistics show that fully one-third of their convicts can neither read nor write; and that only about one in seventy can be considered educated. Probably a large percentage of the balance have so little education that they might with propriety be classed among the grossly ignorant of the kingdom. The statistics of the Monroe county penitentiary, at Rochester, exhibit the fact that about one-fourth of the inmates are without education of any kind whatever, and as many more have none that is available for practical purposes. The Albany penitentiary presents a still stronger record. According to the last report, about one-half the inmates can neither read nor write, and about one-sixth can read only. Of the remainder a large number, no doubt, can be regarded as having no practical education. This unusual percentage of ignorance in the Albany prison, may be attributed to the fact that it has received a large number of its inmates from the District of Columbia, where the institution of slavery has so long been hostile to public education. A system of secular instruction prevails in the Clinton prison to a very limited degree, and the report is most favorable, indeed, to the moralizing influence of even that very limited intellectual culture. But in that prison, as elsewhere, the passion of greed among its managers, which looks to making it a paying, instead of a reforming, institution, restricts unreasonably the time which might be profitably employed in that moral and intellectual development, so essential to a proper balance of the human mind. I am unable to ascertain the educational status of the Clinton prisoners when admitted; but reports from other prisons and penitentiaries fully sustain the views I have expressed, and show that at least one-third of all the inmates of our prison houses, from the county jail to the State penitentiary, may be classed as grossly ignorant, and that fully one-half have not sufficient education to be of any practical value in life. The census of 1860 discloses the fact that of the population of our own State who have attained the age and

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status of accountability to our criminal laws, only about one in fifty are so ignorant as to be unable to read and write. But it has been urged that such intellectual development as results from a common school education, has no appreciable influence over moral conduct—that, in short, intellectual development is not moral development. There is evidently some truth in this position, but not enough to compensate for the error. A purely intellectual education is not moral education. But there never was, and probably never will be, any system of intellectual development which does not affect, for good or ill, the moral sentiments of the pupil; and besides, the system of public school education which has prevailed in this and other States, very judiciously, though not as efficiently as could be desired, combine moral and intellectual instruction. When our common schools attain the perfection to which they are tending, and which, I trust, they will soon reach, then all those substantial virtues, the practice of which makes noble and exemplary men, will be both theoretically and practically taught therein. But I insist, sir, that a purely intellectual education is of itself a strong guaranty against subsistence in our prisons or poor-houses, at the public expense. We are all creatures seeking happiness; and unless we become so low as to be indifferent to pleasure or pain, we will seek happiness in some department of the mental energies. The man without intellectual or moral culture will seek pleasure in the domain of the passions and propensities. He who is endowed with a fine and highly cultivated intellect finds in its exercise the highest order of enjoyment which it is possible for man to attain; and to withhold his intellectual food would be the most painful privation of life. Such a man has a keen relish for mental pursuits, and in them he finds a sweeter pleasure than the non-intellectual man does in the gratification of the more animal instincts of his nature. But with a fine intellect let there be a well developed morality as the governor and director of human actions, and we have the highest source of happiness and the best possible guaranty of an honorable, upright and useful life. This state, in view of its own safety as a popular government, and out of regard for its honor and standing among the States of the nation, is in duty bound to put forth efforts to secure this important end. The results cannot be accomplished through the churches, for while they teach morality, they also teach church creeds and church theology, which may be so obnoxious as to shut out the majority of those who most need moral and intellectual culture; and besides while they teach their peculiar theology which people do not feel bound to support, they fail to cultivate the intellectual powers to the propriety of which all agree, and in which all feel a common interest. It is only through the system of common schools that the State can so develop the moral and intellectual powers of the people as to render it a perfect popular government—eternally strong and secure. Not only the general welfare of society, but the safety of the State and nation demand a more complete and universal system of education. The history of riots in our land, and more especially in our cities, develops the fact that they have been confined almost exclusively to the grossly ignorant classes. The three days' reign of terror in New York, which shook the foundations of free government quite as seriously as the rebellion itself, was the bloody work of the most ignorant and degraded portions of that city. Ignorant humanity was wielded as a mighty instrument in the hands of a few wicked leaders. And what is true of that riot has been true of all the riots which with bludgeon and torch have disgraced the land. It is a remarkable fact that the four years of rebellion which shook this republic like a great political earthquake, and struck its bloody ax at the very foundation of civilization and free government, was the most virulent and fierce in the States which were the most benighted and depraved; but it gradually ran into a more modified and moderate form as it reached a more enlightened state of society. Everywhere it had its root and material support in the ignorance of the masses. For a period of many years that rebellion had been developing to its culminating point by a system of hostility to public education, amounting to almost positive prohibition. The census discloses the fact that in one of the States, which went into the rebellion the earliest, fought the fiercest, and came out the latest, every seventh white male adult could neither read nor write. Had free public schools prevailed at the South even to the limited degree they do at the North, such wicked and wanton rebellion would have been simply impossible. I do not forget, sir, the strong argument urged, that the State has no moral right to take the money of one man to educate the children of another; neither do I forget it has not the moral right to take his money to pay for the imprisonment of those children who from want of proper education have been led into crime. Do men realize that a large share of the taxes they are annually paying to build jails, prisons and penitentiaries; to maintain courts, sheriffs and prison-keepers; in short, for efforts at neutralizing the legitimate out-growth of the dense ignorance which still prevails in the land, might be saved by striking at the root of these evils through the agency of the common schools? Apply one-half the money thus expended in doctoring effects, to doctoring the cause through the agency of universal education, and you will save the other half. Is there any greater wrong in taxing a man to prevent crime than there is in taxing him to punish crime? On the contrary, does not economy and sound statesmanship dictate that we should rather educate the people, than punish them for the want of education? This protracted warfare upon the effect of a cause, instead of upon the cause of the effect, is the poorest possible economy in an individual or a State. A farmer was once seriously annoyed with flags and rushes which annually grew on his meadow land; and he studied economy in the employment of hands to pull them out. If he saved a few pence in this annual labor he boasted of his great stroke of finesse for the year. But the old man eventually died; and his son, who had received a smattering of scientific education, succeeded to the estate. He at once saw that the flags were the production of the

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stagnant water, which, for a portion of the year, stood on the grounds. He at once struck at the cause by drainage, and forever after saved the annoyance of the flags and expense of pulling them up. The State might learn a profitable lesson from that simple and veritable incident; and instead of lavishing so much time and money in building prisons, maintaining dignified courts, and supplying all the other expensive paraphernalia of criminal prosecutions and criminal punishment, it would work great economy as well as sound morality to drain the swamps of their malaria by sustaining the most perfect system of common school education. True, we now have on our statute books a law which seems to make ample provisions for free common schools the current year, but the very next Legislature may entertain views not unlike some gentlemen upon this floor, and return to pulling the flags instead of draining the swamp, by reducing the tax to the one-quarter mill system for the next school year. If there is any thing which should go into the Constitution and there forever remain, it is that which lays broad and deep the foundations of a free government by laying broad and deep the foundations of free education. Political considerations may frighten some from sustaining such a proposition, and a false sense of economy may lead others astray, but there has been nothing before this Convention with regard to which I have so much desired to stand upon the record as this article on education. Economical, political, national and moral considerations all demand the establishment of free schools by constitutional law. Give me control of the common schools of the State and I care not who attempts to control its politics. With universal and free education it will be safe politically, financially and morally, and when the devotees of the Pharaohs or the Napoleons shall ask for the monument of American glory and greatness we can point them to the wisest, happiest and best people beneath the sun.

Mr. SPENCER—I do not suppose that any member of this Convention opposes universal education. For myself, I am willing to see it free, and that the experiment which is now being tried shall be fully carried out; but before we commit ourselves permanently to a system, it seems to me that we had better know whether it is capable of being carried on without incurring a degree of danger and hazard arising from the circumstances in which we are placed. We heard it stated from a member of this Convention, a few days since, that in the city of New York, where the schools are free to the most unlimited extent, that a portion of the population there belonging to a religious sect did not avail itself of the freedom of education which was bestowed upon it; and the reason was, because the religion to which that class of persons was attached was not taught in the public schools, and they desire to send their children for education to schools where religion as well as other matters of instruction should be taught. The same thing occurs in other parts of the State. In the village near where I reside the free school system prevails, but notwithstanding that fact, in that village a religious denomination does not avail itself of the freedom of education which was there permitted to be enjoyed; but for the purpose of uniting religious instruction with secular they have their separate school for the education of their children. Now, sir, what I desire to call attention to is this: the day may possibly come when there will be a contest—and a severe contest, too—in various localities upon that question, which will so far interfere with the education of these localities, and perhaps with the education of the children in the State, that we shall be without a sound system of instruction as we have hitherto enjoyed. I desire to state another fact in this connection. In the single district in which I reside, a majority of the voters are of the Catholic faith. As soon as the free school system in the last year went into operation the Catholic priest in the village close by went to each individual in the district attached to his church, and advised him to be on hand at the time of the annual election, and to choose a trustee from their own number. For that there was no ground for complaint, except the fact that a person outside of the district, through motives of pretended protection of its religious faith, sought to interfere with the administration of the affairs of this school district. These difficulties in the way are those which will constantly arise under this free school system, or, at least, there is danger that such may be the case, and I think that before we commit ourselves permanently to any such system, we should let the experiment be tried under the auspices of the Legislature.

Mr. MERRITT—I would like to inquire of the gentleman from Tompkins [Mr. Barto], who offered the pending amendment what amount would be raised by the tax he proposed?

Mr. BARTO—Between four and five hundred thousand dollars.

Mr. MERRITT — I would like to inquire whether he intends that that amount shall be collected in coin. [Laughter].

Mr. BARTO—I should like to see money again.

The question was put on the adoption of the amendment offered by Mr. Barto, and it was declared lost.

Mr. BARTO—I move now a further amendment, that the words "shall be free" be stricken out, as not properly expressing the intention of the committee, and to insert in lieu thereof "shall be supported by taxation."

Mr. RUMSEY—I offer the following as a substitute:

To strike out all after the word "be," in line two, and insert the following: "without charge and the Legislature shall require by law the education of all the children in the State."

I believe it is a well established proposition now, that the cheapest way in which we can get rid of the expense of criminal jurisdiction is by educating the people. The Legislature have already adopted propositions by which schools are to be without charge. They have always, heretofore, been free for the education of every one who sees fit to send their children to school, but instruction has not been furnished to them without charge. I agree with the gentleman from Tompkins [Mr. Barto] that the language used by the committee does not properly express the intention they have in view, that the school should be free of charge, and I have inserted that lan-

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guage for the purpose of correcting that which I consider as a defect. Sir, when we have adopted this system it is right and proper that the parents of all children should be compelled to educate the children, and I have inserted in that amendment a proposition requiring the Legislature to provide for the education of all the children, but leave it to the option of the parent to educate his children where he pleases. But by it we furnish the means of education for all the children of the State, in accordance with the intention, and then we require that all the children of the State shall be educated. That is the provision of law in Prussia, and it works admirably; it will work admirably in our country, for it will diminish the volume of crime and the expense of criminal jurisdiction.

Mr. VAN COTT—I would ask the gentleman from Steuben [Mr. Rumsey] if the amendment he proposes is not open to a disputed construction? The first provision is for the free education of all the children of the State in the common schools. Then follows the provision that the State shall provide for the education of all the children in the State. Now, suppose it happens, as it has happened, that Catholic parents or Jewish parents are not willing to educate their children in the common schools, and they keep them from those schools, here is a mandate that the State shall provide for the education of all the children. Would not that be so construed as to compel the Legislature to provide separate schools for the education of that class of children? I think it might receive that construction.

Mr. RUMSEY—The intention is to impose the duty upon the Legislature to require that all children shall be educated. Nothing more. They have provided the means of education, and if those who have children are willing to avail themselves of those means it is all right. If they are unwilling to educate them in those schools thus provided and paid for at the expense of the State, then they must comply with the provision of the Legislature, and educate their children wherever they will, and find schools of their own.

Mr. BARTO—Does not my amendment clearly express the intention?

Mr. RUMSEY—No; I do not think it does.

Mr. VAN COTT—I would suggest this form to the gentleman from Steuben [Mr. Rumsey], "the Legislature shall provide for the education of all the children of the State in the public schools, and such education shall be free of charge."

Mr. RUMSEY—No, sir; I do not propose to do that; for I do not desire to compel those who have any scruples, religious or otherwise, against sending to the public schools, to send there. I would require them to send to some school, or in some way to educate their children.

Mr. VAN COTT—The trouble with the gentleman's proposition is, that he requires the State to pay the expense of educating them at whatever school they choose to send them.

Mr. RUMSEY—The gentleman is mistaken in regard to the proposition which I submit. It is that they shall provide by law for the education of all the children; and they will have done that when they furnish free schools and require the education of the children either in those schools or wherever the parents choose to furnish this education.

Mr. VERPLANCK—I would like to ask a question; whether this is not a proper subject for legislation?

Mr. RUMSEY—It is a very proper subject for legislation, but it is better than we should put it in the Constitution, where it will not be the subject of controversy year after year at our elections, and in the Legislature by those who like the gentleman from Tompkins [Mr. Barto] are unwilling to defray any portion of the expense of educating these children who seek to get rid of taxation by appealing to popular prejudices from year to year.

Mr. COMSTOCK—I ask the gentleman from Steuben [Mr. Rumsey] if it is his meaning that a young man may go through college at the public expense?

Mr. RUMSEY—No, sir.

Mr. E. BROOKS—It seems to me that the conclusion of the gentleman from Kings [Mr. Van Cott] is irresistible, that the law will be capable of the construction which he has suggested; and it, therefore, becomes the Convention to consider whether, when the State enters upon the work of educating the children of the State, it is not bound to recognize those prejudices which exist among a large class of its people; to wit, the Jews, of which there are some thousands of children in the city of New York; they also have I believe some thirty or more synagogues there; and the still larger proportion of that population known as Roman Catholics, and who keep very many of their children apart from the general free schools of the city. If this proposition admits of that construction suggested, as it seems to me it does, it is wise for the Convention to consider what may be the bearings of such a proposition. I do not mean to state whether it would be just or unjust to educate all the children of the State. Nor do I think the precedent made by the gentleman from Steuben [Mr. Rumsey] in regard to the kingdom of Prussia, to be an apt one; for he must remember that, while the children in that government are educated at the expense of the State, it is in the consideration that when they are young men they shall serve the State for the term of seven years or more—ten I believe—in the military service of that government. Therefore, the education which the State gives in one direction is paid for by the military equivalent which it receives in another. I doubt, Mr. President, whether it is wise to adopt an amendment capable of the construction to which the gentleman from Kings [Mr. Van Cott] has made reference. I do believe, with all my heart, that it is wise and proper to educate the children of the State. I believe, also, that education is the greatest possible preventive of crime; and that there can be no greater economy practiced by the State than in these various modes of prevention, such, for example, as is proposed by the article under consideration, and such as was considered the other day in the article from the Committee on Charities.

Mr. VAN COTT—Will it be in order to propose a substitute to the amendment of the gentleman from Steuben [Mr. Rumsey]?

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The PRESIDENT—It will not. There are two amendments now pending.

Mr. VAN COTT—Then I will read the amendment which I propose to offer, if that is not adopted:

"Education in the public schools shall be free of charge, and shall be provided for all the children of the State."

That is not open to misconstruction.

Mr. RUMSEY—I object to that. I propose to amend my proposition by inserting:

"The Legislature shall pass laws requiring all the children of the State to be educated."

Mr. BICKFORD—It seems to me that it will not accomplish much to say that children shall be educated unless you say in what manner they shall be educated. All parents educate their children in some way. Whether they send them to school or not they receive some sort of an education. If any thing is to be accomplished by the proposition of the gentleman from Steuben [Mr. Rumsey], it is necessary for him to say that they shall be educated in school; that they shall be sent to school to be educated. The fact is that all the children of the State are educated now, either in good or in evil. No person can grow up uneducated. Therefore, I apprehend that the amendment proposed by the gentleman from Steuben will amount to nothing if adopted. There is no force in it, unless it is required that children shall be sent to school.

Mr. OPDYKE—I understand the proposition of the gentleman from Steuben [Mr. Rumsey] to be to enforce in this State the policy of compulsory education. That proposition I am in favor of. My impression is that the form of the proposition might be improved from that in which it is now presented. I had prepared an amendment for that purpose which I proposed to offer, and which I will read in the hope that the gentleman from Steuben will accept it.

SEC —. The first Legislature chosen under this Constitution shall provide by law for the compulsory attendance at a public or private school, for at least three months in each year, of every child between the ages of seven and thirteen, whose health will permit its attendance.

It seems to me that this amendment is preferable to that of the gentleman from Steuben [Mr. Rumsey]. It presents a more specific plan for establishing the rule of compulsory education. Whatever form that proposition may take I desire to say a few words in its support. It is no new proposition; it is no untried experiment. It is well known that that rule has been in force in Northern Germany for a long time, and that its results have been most salutary. It is known that is has placed that people in the very front rank of all nationalities in point of intelligence: and it is rapidly putting them on an equality with the foremost in political strength, power and influence. I believe it has been inaugurated also in some of the New England States, but at a period so recent that we have not yet had an opportunity to ascertain the results. But there can be no doubt that its results must be beneficent wherever it is tried, and pre-eminently so under a free government like this, where nearly every adult male shares in the administration of the government. I hold, sir, that its adoption is due to children of neglectful, intemperate and vicious parents. It is well known that to children study or mental discipline is distasteful. They prefer play. It needs the incentive of parental influence to induce them to go to school That influence is not always exerted; and the result is that the children grow up in idleness, and often with vicious habits; and when they arrive at the age of discretion, they find themselves, without any fault of their own, mere drones and outcasts in society. It is regarded as the proper province of a government to care for the unfriended infirm, such as the sick, the insane and the poor; and certainly there is no class of persons so helpless and unfriended as the children of vicious, intemperate and neglectful parents. In the next place, I hold it is due to society itself. It cannot be expected that children thus reared in ignorance and vice will become useful members of society; and, consequently, they are the material out of which our almshouses and our penitentiaries are chiefly filled. If we want to elevate the moral character of our people, and qualify them for usefulness, we can take no better means, in my judgment, than to adopt this rule of compulsory education. It has been said here this evening that these are proper questions for the Legislature. On the contrary, I believe it to be the duty of those who frame the fundamental law, thus to lay down the principles which shall govern legislation. In some cases where the Legislature has failed in its duty they must even step beyond this sphere and embrace details which properly belong to legislation. This was done by the Convention of 1846 in regard to State finances and with excellent results. But, sir, I hold that this proposition is not of that character at all. It is the exclusive function of those who frame the organic law to engraft on it a policy as fundamental as this, provided they deem it to be salutary. We put in our Constitution, all States put in their Constitutions, some rules in regard to public education. Here is a rule which I believe to be of the best, and as fundamental as any. If there be a proper place for it anywhere, that place is in the fundamental law, leaving to the Legislature, as my proposition does, the duty of carrying it out in detail. If the proposition of the gentleman from Steuben [Mr. Rumsey] should be voted down, I will then offer this, and also ask the Convention to indulge me in some further remarks in its support.

Mr. RUMSEY—I have no care about the form which my proposition assumes; but the difficulty with that proposed by the gentleman from New York [Mr. Opdyke] is, that it requires the education of these children at a particular place, at a school. That should not be. If the parent is willing to educate them at home, he should have the liberty to do so; and I will accept any proposition that the gentleman may offer, that shall require the Legislature to pass a law requiring all the children within this State to be taught to read and write; that will satisfy me; and let them be taught wherever the parents choose to have them taught.

Mr. OPDYKE—I have used the term "a public or private school." I suppose any sort of private education would be called a private school.

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Mr. RUMSEY—Very well, I will accept that amendment, then.

Mr. CURTIS—Do I understand the gentleman from Steuben [Mr. Rumsey] as accepting the amendment of the gentleman from New York [Mr. Opdyke] to offer this as a substitute for the section?

Mr. RUMSEY—No, sir; I propose to keep the first part of the section, that instruction in the schools shall be free of charge, and the balance of it he proposes.

The PRESIDENT—The Chair understands this to be a new section proposed by the gentleman from New York [Mr. Opdyke].

Mr. OPDYKE—I propose to blend it with the proposition of the gentleman from Steuben [Mr. Rumsey] leaving the first clause of his proposition.

Mr. RUMSEY—That instruction in the schools of the State shall be free, and then the balance of it as stated by the gentleman from New York [Mr. Opdyke].

Mr. CURTIS—The point involved is so important, Mr. President, that it seems to me it should receive, for a few moments, at least, the very thoughtful attention of the Convention. The principle in the amendment is what is known in the science of education as "obligatory education." It is a principle which is well recognized by the chief governments of Europe, and by all the keenest thinkers on the subject at this moment. I will cite, for instance, John Stuart Mill, who, of all the distinguished English publicists is, probably, the one who asserts the small function of government as strongly as any man who insists that government should interfere in the individual action as little as may be; and yet Mr. Mill, after the greatest consideration, does not hesitate to say, with his characteristic caution, that it is a just exercise of the power of government to furnish opportunity to every parent in the State to have his children educated, and then to require that those children shall receive an elementary education. Nor is it a new principle, sir. Certainly four centuries ago, in Scotland, it was recognized. It was again recognized in France a century later. The French Convention, at the close of the last century asserted the same principle. In Sweden, in Norway, and in Denmark at this moment, it is required that every child shall go to school, under penalty of not receiving confirmation from the minister, and a further penalty of a fine imposed on the parent or guardian. And in Germany, to which my friend from New York [Mr. Opdyke] has referred, this system has received its fullest development. I will mention, for the information of the Convention, that in the old duchy of Wurtemburg, there is now supposed to be no person who cannot read or write. In the duchy of Baden, which at the beginning of this century was one of the most backward states in Europe, for the last thirty-four years, there has been a system of obligatory education, which has diminished crime and increased the general welfare of the duchy of Baden in that degree that the current of emigration from that part of Germany to this country has been stopped; and of the enormous increase of prosperity in that State, the director of commerce, certainly a most competent judge, declares that the chief cause is the system of obligatory education. As my friend from New York [Mr. Opdyke] observes, it is Prussia which is the great model of this system. Now, Mr. President, in Prussia this system dates from Frederick the Great in 1763. The law of 1812 and 1819 inflicted very severe penalties upon the parents or guardians who did not conform, and the result was in the twelve following years, a decrease in the ratio of crime of forty per cent. So far is the system carried there, so perfect is it, that there is a word in the German language to express the time when a child is due at school, as we say of a note of hand that it has fallen due. In 1864, of three million of children of the legal school age in the kingdom of Prussia, there were only one hundred and thirty thousand absent, and those one hundred and thirty thousand were those who were educated at private schools or educated at home, and included also the physically and mentally disabled. Still further, in illustration of the operation of this system as a phenomenon of the science of education: in the Prussian army, of every hundred recruits, there is an average of three only who can neither read nor write, and the drill inspector at Potsdam having found in twelve years, among the recruits who came under his observation, only three who could not read and write well, was led to inquire into the circumstances, and found that these three were born upon boats, and, plying up and down the river all their lives, had never stopped long enough to go to school. My friend and colleague from Richmond [Mr. E. Brooks] implies that all the development which America expects of a citizen does not necessarily flow from the education which is given in Prussia. But the most competent observer that America has ever sent to Europe for these subjects—Horace Mann—who may be called, in this sense, I think, the father of public school education in this country, and who seemed to see every subject connected with public schools with every pore of his body—Horace Mann, who made a thorough investigation of the Prussian system, of which he gives the most graphic and picturesque account, does not hesitate to say that in his judgment the reason that it does not make good citizens is not that there is any fault in the system, but that there is a fault in the state of society, and it was his judgment, also, that the state of society would in twenty years undergo a change, under the influence of such a system. And surely the changes that have taken place in Prussia since that period are some vindication of the justice of his prophecy. Prussia has within the last twenty years ascended to the highest place among European continental powers, and although a military monarchy, the military budget of Prussia is to-day, in proportion, the cheapest in the world, and the position that Prussia has acquired, she owes, undoubtedly, no less to her system of obligatory education than to her needle gun. In this country the subject was first brought to public attention by Mr. Mann, some twenty years ago, in Massachusetts. He asked the pertinent question, which Lord Denman has since asked in Parliament, whether the State is not morally obliged to protect itself

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from the necessary danger and degredation consequent upon ignorance, by obligatory instruction. Well, sir, the experiment was tried in Massachusetts. From 1856 to 1866 the average arrests under the law that was passed for this purpose were about one hundred and forty, or one hundred and fifty; no more — showing that the sentiment of the State did not respond and was not yet prepared to adopt this measure. I am told, and I hoped to have authentic information before this matter was reached, but failed to receive it—I am told that there is such a law in the State of Rhode Island. But if there be, my knowledge of that State leads me to doubt if it be enforced. There is, also, at this moment, pending in the Legislature of Missouri, a proposition for obligatory education. But with my own feeling I am sure that our disposition of this question will naturally be that of the Netherlands, a country with which we have a certain intimate political similarity and relation. As long ago as 1600, in the midst of the terrible conflict of the Netherlands with Philip Second of Spain, there was not a single man, woman or child in the Netherlands, according to Mr Motley, who was not able to read, write and cipher. In 184 0in the great city of Haarlem, in the Netherlands, there was not a single child found who had not the same accomplishments. In 1856 Matthew Arnold, the most competent observer that could be sent into that country or into any other country for the purpose, declares that their schools are unmatched upon the continent. But, as I am stating this matter merely as a scientific fact in education, as I am taking no part, so far as the immediate question of the amendment is concerned, but with the views that I at present have, shall vote against it; I add that when the great question was raised in the Netherlands, some two or three years ago, whether the system should be introduced; after every argument drawn from the experience of Prussia had been exhausted, the chambers decided that their old system, the free but not obligatory system, was more compatible with the genius of their institutions, and had produced results of which they were proud enough, and which assured them of the future. In this State, although in parts of it, and especially in the city of New York, the accommodation of the children who are of a proper school age, is so deplorable, that the city superintendent has more than once urged measures looking to obligatory attendance in some manner, I will state as a mere illustration the relative condition of the city of New York with the Kingdom of Prussia that while of the three million of common school age in Prussia one hundred and thirty thousand were not at school, in the city of New York, where there are probably two hundred and fifty thousand children of the proper school age, I observe by the address of my friend and colleague on the committee [Mr. Larremore] lately made to the board of education that the average attendance at school out of these two hundred and fifty thousand is only about ninety-six thousand. While this, on the one hand, shows the necessity of doing something, if something can fairly be done in such a population as that in the city of New York; on the other hand, he will bear me out in saying that there are very many of those schools over-crowded. It is the constant complaint with the superintendent and his assistant, and the superintendent of public instruction for the State at large is perfectly aware of the fact and mentions it in his report. Now, then, if the State of New York does not provide, has not provided with the immense school taxation which we think to be all that the State at present cares to endure, has not and does not yet provide sufficient accommodation for the scholars which it has, and in many of the schools in the various parts of the State has not provided the proper school equipage, it is premature in the present state of opinion to put into the fundamental law a requirement that every child in the State shall be educated. This provision of the committee, sir, requires that all the common schools that are now maintained shall be free, that is to say, that the instruction given in them shall be without charge, and it is, I am very sure, in the present state of public sentiment, for moral influence and evident political interest to do the rest of the work which is to be done.

Mr. BERGEN—I have not risen to enter into this discussion, but to set the gentleman right upon one point. I think the gentleman asserted that the whole population of Holland had been educated since about the year 1600.

Mr. CURTIS—No, sir, my assertion was, that Mr. Motley, said every child could read, write, and cipher. I did not mention the numbers.

Mr. BERGEN—It was the year I was speaking of. I will state to the Convention that if the gentleman will take the trouble to examine the records in the City Hall, he will find there are many who have hailed from Holland that have been making their mark.

Mr. CURTIS—That is probably why they came away from Holland. [Laughter]

Mr. BERGEN—I have had occasion to make the examination myself; and I find that many of them have made their mark. They were not so highly educated as Mr. Motley undertakes to assert. I am aware that the Hollanders endeavor to educate all their people; but they have failed the same as we have failed. There are many of them whom I have known to make their mark.

Mr. LARREMORE—The gentleman from Richmond [Mr. Curtis] made an allusion to the average attendance of the schools of the city of New York, and I rise to make a correction in regard to it. The average attendance is about 90,000, and the whole number taught is about 200,000. The average attendance is computed in accordance with the rules prescribed by the board of education and is based on the daily sessions, taking two for each day, on the number of scholars who attend each of these sessions; I desire also to state in reference to the crowded condition of the schools of the city to which the gentleman referred that that is confined almost exclusively to the primary departments for younger children. And I would state for the information of the gentleman that we are building schoolhouses as fast as we can at the present rates of building, and we hope soon to take them all in.

The PRESIDENT—The motion of the gentleman from Steuben [Mr. Rumsey] not being

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germane to that of the gentleman from Tompkins [Mr. Barto] the question is on the motion of the gentleman from Tompkins.

Mr. BARTO—I would like to have the gentleman from Steuben explain in what respect my motion is unfair, and does not express fairly the intention. He says it does not, I would like to have him explain.

Mr. RUMSEY—It does not express it fairly, because it is an appeal to the popular prejudice against the provision.

Mr. BARTO—Then you wish to cover the thing up?

Mr. RUMSEY—I wish to put it precisely in the shape where we intend to put it, to establish free schools to be paid for by the whole State.

Mr. BARTO—By taxation?

Mr. RUMSEY—Yes, sir.

The question was put on the amendment of Mr. Barto, and it was declared lost.

Mr. RUMSEY offered the following substitute for the fifth section:

SEC. 5. Instruction in the common and union schools of this State shall be free of charge, and the first Legislature chosen after this Constitution shall have been adopted shall provide by law for the compulsory attendance at a public or private school, for at least three months of each year of every child between the ages of seven and thirteen years whose health will permits its attendance.

Mr. BICKFORD—I hope, before the vote is taken on this proposition, that it will be so amended as not to make it compulsory upon the Legislature. Let them have the power to do it, and let them have the power to repeal it if it does not work well.

Mr. VAN COTT—The Legislature has the power already.

Mr. BICKFORD—Then I hope the amendment will not be adopted.

Mr. DEVELIN—Mr. President, the latter part of the amendment offered by the gentleman from New York [Mr. Opdyke] is exceedingly objectionable. It declares that the Legislature shall make a provision for the education of children in a public or private school. I, sir, have children that are being educated, but they do not go to school at all. My children are taught in my own house. Is the Legislature to interfere and take my children away from me and send them to a public or private school? Instruction by a governess at home is not instruction in a school in the sense of the amendment. The schools of New York city and State are divided into public and private schools. The public schools are maintained by the State; the private schools by individuals, where numerous scholars go, and the proprietors receive a compensation for their labor toward their education. The proposed section reads that the Legislature must provide that these children shall go to one of these two classes of schools. I have no doubt there are other gentlemen in this Convention, certainly there are many in the city of New York, and scattered throughout the State, whose children are educated at home. It would be very objectionable, and would interfere with personal rights, and the personal rights of every father who desires to have his children educated in his own house, to adopt such an amendment as this. This amendment is so broad as to allow the Legislature even to determine the class of schools in which children shall be educated. They may designate the schools where I shall send my children. They may pass a law that no child shall go to a school where the Catholic religion is taught, or that no child shall go to a school where the Jewish religion, or the Episcopalian religion, or any other religion they choose to designate, is taught. It is proper that the Legislature should have the power to pass a law designating what religion shall be taught in the schools, and requiring the children to attend those schools? I am opposed to compulsory laws for education as proposed by this amendment. I am in favor of the State affording every means for the education of its children, holding out every inducement to parents to send their offspring to school, and every inducement to the children to go; but I am opposed to the principle that the Legislature shall have the power to interfere with parental rights; to go into a house and say a child shall go to school whether the parent or the child desires it or not. In the cases cited by the gentleman from Richmond [Mr. Curtis], Prussia, Denmark and Sweden, the condition of the people has not been improved by their education. The very town he speaks of, Baden, as so eminent for its educational establishments, has the largest gambling establishment in the world, and supported, too, by the government. It is well known that Sweden is one of the most immoral countries in the world, and Prussia is not far behind it. The city of Berlin has the reputation of being as immoral a city as there is on the face of the globe, whether in Christian or pagan lands. The education of the people, therefore, does not appear to tend to the elevation of the people in a moral point of view. The cases cited by the gentleman from Richmond [Mr. Curtis], were monarchies or despotisms, without any respect for their pretended Constitutions. The government invades the family and removes the child and sends him to such school as its officers choose, or punishes the parent for his neglect. But it is different in this country. Our people never will submit to the interference of the goevrnment in these matters. You might as well undertake to compel parents to teach their children trades, or to follow a certain profession, or oblige our citizens to go to church every Sunday, because it is supposed that such visits improve the morals of the attendants at church, as to adopt this; but does this, in our country, justify the interference of the Legislature? Certainly not. This amendment violates one of the first and most important principles upon which our government is founded—the right of personal and social liberty.

Mr. HAND—I am in favor of this amendment, for the reasons that have been given, and for other reasons to which I shall allude briefly. If it is for the interest of the people of the State of New York to provide for the education of the children of the State, and expend large sums of money taken from us by taxation to secure that object, and if they have the right to do that, to

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promote the fundamental interests of society, if they have the right to go into my purse, violating my private right, and take my money for that purpose, they have a right to go further, and insist that the money thus raised shall fully accomplish the purpose intended. If they have the right to tax the people of the State of New York to raise the means for the education of the masses of the people, because it is for the interest of the State of New York, the same reasons justify the amendment proposed. It is because the very administration of the laws of the State depends for its security upon the public virtue and the public intelligence of the citizen; so that our government may have a standing on a sure basis and exist in any degree of safety. In order that republicanism may live, in order that the people may be qualified for self government, it is absolutely essential that the people themselves shall be so educated as to be qualified to be citizens under a free government. This is absolutely essential. When gentlemen say that the people will not submit to this, it is equivalent to saying they will not submit to those restraints and injunctions in legislation which are necessary to the welfare of our people, and to sustain our institutions. The man who is opposed to them is opposed to the necessary legislation to secure the very foundation of a free government, and the welfare and even the continuance of our institutions. I have another reason, one that has not been touched upon here, and which is equally important, according to my judgment, a reason why we should provide for the compulsory education of every child in the State of New York; a reason entirely independent of the welfare of our people, and entirely independent, in one sense, of the perpetuity of republican institutions; and that is the welfare of the child himself and the protection that is due to him, to qualify him for future citizenship. We have thirty thousand drunken fathers in the State of New York who take every penny they can lay their hands on to provide for the gratification of their own evil propensities. Those fathers have households which are full of little ones that are coming up to be citizens of the State of New York. You hold them amenable to the laws as they grow into manhood; you require that they shall understand the laws; you say in your jurisprudence, ignorance is no excuse for a man, that the State prison shall receive him as a victim whether he is ignorant or not of the laws he is unable to read. The State requires these things of its citizens, and is bound by every principle of justice to qualify those children for that citizenship, and for those responsibilities which they place upon them. The future well-being of the child should not be left to the caprice of a drunken father. It is the glory of our government that it extends equal protection to all. It is the glory of our government that manhood in its intelligence and strength shall be protected. Now, manhood in its wisdom and strength comparatively little needs your protection, but the little ones that cannot protect themselves in their ignorance and weakness, appeal to the citizens of this State that they shall be protected, that they may be fitted for those responsibilities that will devolve upon them when they come to the duties of citizenship. For this reason, the principles of justice, no less than the principle of the safety of our government and the perpetuity of our institutions, require that we shall provide for, and enforce the education of all. Can any gentleman feel that because a father neglects his duty to his children, because by the institutions of our country, men are permitted to become drunkards—the government by its license system making the way easy and respectable—in truth, that their children shall grow up in hopeless ignorance, the State itself goes into partnership with the whisky dealer (sharing his profits) in establishing and perpetuating drunkenness—are we to leave the little ones to suffer every privation? Let us compel parents to send their children to school, and the State provide for and compel their education, that the seeds of intelligence and virtue may be implanted in them, and that they may receive the protection which is their right. I do not propose to go into an extended argument on this subject. I rose principally to say that I am in favor of compelling the education of children—of all children in the State. I do not agree with my friend from New York [Mr. Develin], that education by a governess is not a private school. I understand that it is a private school, and that such education comes under that provision. If it does not, this can be so amended as to cover cases of that kind. I have no doubt there are thousands of such cases in the city of New York. But we should make some provision for the education of every child, and compel every parent to provide education for his children; so that those who are lost to every principle of humanity, and to every parental affection, so sunken in vice, as to neglect this duty, shall be compelled to give that protection and to secure those qualifications for citizenship which education alone can secure.

Mr. FOLGER—I move the previous question.

The question was put on the motion of Mr. Folger, and it was declared carried. So the previous question was ordered.

Mr. KINNEY—I ask to have a division of the question, if it is proper under the previous question. I desire that part shall be voted upon first which provides that instruction in the schools of the State shall be free of charge.

The question being put on this branch of the amendment of Mr. Rumsey, it was declared adopted.

The question being put on the remaining proposition it was declared lost.

Mr. ALVORD—Is it now in order to move to strike out this section?

The PRESIDENT—It is.

Mr. ALVORD—I trust without making any remarks, that it will be stricken out; and I make that motion.

Mr. KINNEY—I would ask if this part of the section is still remaining in the section:

"Under such regulations as the Legislature may provide."

The PRESIDENT—It is not.

Mr. KINNEY—Then I move to insert them.

Mr. C. C. DWIGHT—I ask to have the section read as it stands.

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The SECRETARY read the section as follows:

"Instruction in the common and union schools of this State shall be free of charge."

Mr. C. C. DWIGHT—I move as an amendment to the motion of the gentleman from Tioga [Mr. Kinney], to insert after the word "charge" "and shall be provided for all the children of the State."

Mr. DEVELIN—I rise to a point of order. Whether that is not substantially the same amendment voted down a moment ago about compulsory education?

The PRESIDENT—The Chair thinks not.

Mr. KINNEY—I accept that amendment.

Mr. DEVELIN—The gentleman from Steuben [Mr. Rumsey] I understand to offer such an amendment with the idea that it would produce compulsory education.

Mr. BERGEN—I hope that neither the amendment now pending or any other amendment will be adopted, but that the section may be stricken out. It appears to me that we are endeavoring to place in the Constitution an article which may tend to destroy it. It is known that a large class of our adult population decline, for reasons of their own, to send their children to public schools, yet we propose in this Constitution to tax that class of individuals to support the public schools, while they at the same time, at their own expense, support their private schools. Is it wise to place this matter in the Constitution? Can we expect to secure the support of that class of citizens to this Constitution if we place such a provision as that in it? Had we not better leave it to the Legislature where it has been left heretofore? Let them act on the matter; they can change it from time to time as the public interest may require. It reminds me of the condition of Ireland, in relation to the matter of church and State. The complaint there, is that the Catholics are compelled to support the established church, and at the same time support their own church. This is a similar case. We compel men here, if we place this article in the Constitution, to support the State schools, to which they will not, in consequence of religious views, send their children any more than they will go to the State church, and at the same time support their own schools. It appears to me to be unwise, impolitic, committing suicide we may say. If gentlemen desire to destroy the Constitution they can do it in this way. On the other hand I desire a Constitution which the people will support, and to obtain that support I consider it unwise to put any thing in the Constitution which will be objected to by a large class. It is for these reasons that I hope every amendment will be voted down, and that the section will be stricken out, as proposed by the gentleman from Onondaga [Mr. Alvord].

The question was put on the amendment of Mr. Kinney, as modified at the suggestion of Mr. C. C. Dwight, and it was declared lost.

Mr. ALVORD—I now move to strike out the section.

Mr. RUMSEY—I rise to a question of order. The Convention have this moment inserted that provision by an express vote; and the only way in which it can be got out is by a reconsideration of that vote; and the motion to strike out is not in order.

The PRESIDENT—The Chair understands the entire section to embrace different and independent propositions; and that it is in order to move to strike it out.

Mr. ALVORD—It is the right and privilege of any parliamentary body to perfect any work before them, and after that they may strike it all out. So far as I am concerned, I do not believe with the gentleman from Kings [Mr. Van Cott]. I am in favor, individually, of the schools of this State being free. I have no doubt but that the education of the people of this State should be based upon taxation to the extent that may be necessary for that purpose; leaving it to those who are in the community who have the means and who desire to patronize other than the common schools of the State to do so; but that the whole property of the State should bear the burden of taxation for the purpose of the education of the children of the people of the State. But we have in the past left this matter out of the Constitution. The first section of the article which is now before you goes to the full length of all the necessities that have come upon us since the time of the passage of the Constitution of 1846. It constitutionalizes certain funds; it authorizes the Legislature to receive certain other funds by way of donation or endowment, to institutions, and to take care of them in the public treasury. It has gone far enough in that regard; we may safely commit to the charge of the Legislature of this State the providing, from time to time, as the necessity shall arise, for the further interests of education. We may leave that entirely in the hands of the Legislature. They have moved thus far with the people in this matter, and they have recently made a very great reform. They last year passed the act by means of which all common school education of this State is free. Let that system settle down upon the people, and let them conclude, as I have do doubt they will, that the enactment of the Legislature shall be in truth and in fact a fundamental law of the State not to be altered. But I fear that if you undertake to crystalize it in the Constitution, you will find men getting the idea that my friend from Kings [Mr. Bergen] has, who says that here is an immutable and fixed law, which will operate injuriously if placed in the Constitution; and they will, for that reason, and for that reason only, vote against the Constitution, whereas, when the people shall speak through the Legislature from time to time, as they come up to Albany to make laws, they will get that reflex from the influence of the people that will enable the law which makes these schools free, to make them free indeed for all time to come. I trust, therefore, that gentleman in their views of this case will come to the conclusion that we have gone far enough in the direction of education, we have gone to the full extent and even beyond that of the Constitution of 1846, and will leave this matter where it may safely be left, in the hands of the Legislature, who, I venture to predict, will never dare to repeal the law by which the schools of this State are free.

Mr. BARTO moved the previous question.

The question being put on the motion of Mr. Barto, it was declared carried.

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The question then recurred on striking out the fifth section, and, on a division, it was declared carried by a vote of 48 ayes, noes not counted.

Mr. S. TOWNSEND—I now renew the amendment that I proposed in Committee of the Whole to the second section in reference to the educational fund after the word "State" in line three to insert "or of any of the cities thereof." I will take occasion to say again, as some gentleman may be present who were not when I addressed the committee, that this constitutional restriction that these investments shall be made exclusively in certain prescribed funds, may be found a very inconvenient one. I will remind gentlemen that under the operation of our State sinking funds, if the means are realized to any thing like the sanguine expectations of the gentleman from Erie, and others with reference to the canals, the stocks of the State of New York will before long be very difficult to procure; and they may be at a premium of ten or fifteen per cent; which would so much lessen the revenue of the school fund. I desire that the Convention, while taking care to secure the funds safely, should at the same time secure as large an interest as possible. We all know as to the stocks of the United States how their values fluctuate; that they have been worth within a few years at one time thirty-five cents in gold, and at another time have been sold at par, and furthermore we have not control over them to any thing like the degree we have over our city stocks. I have always held, in my classification of stocks, city stocks first, State stocks next, and United States stocks next, and the nearer home you come in this matter of stocks, the better is the security because our home stocks are more under the control of our local laws. The stocks of the city of New York their amount, value, etc, were mentioned the other day. Why, sir, could there be any better security than they present? Not that the city of New York will require any such assistance to her credit as this. She has only forty millions of dollars of indebtedness. She has fourteen or fifteen millions of her own bonds in her treasury, very injudiciously, as I think, for in my opinion they should be canceled; and she has her great revenue from the Croton water-works, a revenue which is supposed to be capable of being increased one millions dollars a year without extortion. As it is, the revenues of that work more than pay for the whole investment that was made in it. I suppose representatives of the city of Albany can cite similar circumstances creditable to that city, and indicating the value of her stocks. And I now leave the question with the numerous representatives of cities on this floor to take care of the interests of those cities in this section and to sustain the amendment.

Mr. KINNEY—I move to reconsider the vote by which the fifth section was stricken out, and also the first paragraph of the fourth section.

Mr. DEVELIN—That is not in order.

The PRESIDENT—Objection being made, the motion lies on the table, under the rule.

Mr. HITCHCOCK—I propose to add to the amendment of the gentleman from Queens [Mr. S. Townsend] another, which I think is germane to it, and that is to restore the words which were stricken out in Committee of the Whole. After "United States," in the third line, add "or loaned to counties and towns for county and town purposes exclusively."

The question was put on the amendment of Mr. Hitchcock, and it was declared lost.

The question then recurred on the amendment of Mr. S. Townsend.

Mr. DEVELIN—I move, as an amendment, to insert the word "bonds" after the words "United States." I believe the United States has no stocks.

Mr. S. TOWNSEND—I accept the amendment.

Mr. COMSTOCK—I hope the amendment offered by the gentleman from Queens [Mr. S. Townsend] will prevail. It seems to me that the discretion for the investment of this fund is altogether too narrow, being confined to the stocks of the State and of the United States. Every one knows that our municipal bonds are the best security in the world, and they generally bear a higher interest than these more public stocks. I think the amendment is peculiarly proper, in view of the fluctuating value of some of our public stocks and in view of the possible danger that the fluctuations may be much greater in the future than they now are.

The question was put on the amendment of Mr. S. Townsend, and, on a division, it was declared lost.

Mr. FOLGER—I move to strike out the section entirely. I desire to ask the chairman of the committee from what was derived the idea of the necessity of it? I find that the Constitution of 1846 has no such provision; and it must be known to many gentlemen who are practically familiar with the finances of the State, that the Comptroller is in the habit of borrowing from the school fund for the purposes of the general fund or some other fund, and that this is almost a yearly practice in the Comptroller's office. Now, this section, if adopted and passed into a constitutional provision, will prevent that facility of carrying on the financial operations of the government by borrowing from one fund to supply the deficiencies of another; and if there is no pressing necessity for such a restriction, I think the section had better be left out.

Mr. CURTIS—It was simply intended to provide for the greater security of these funds. As was stated at the time, in the committee, there is a constant loss of the school moneys of the State, arising from this system of mortgages to individuals, and it was therefore desired that this fund should be made and kept good, and to that end, as fast as these mortgages should expire, these funds should be invested in those securities. This section was drawn by the committee after consultation with the Comptroller of the State, and with the late Comptroller, Mr. Church.

Mr. FOLGER—Has there ever been a loss from the fund after the money has got into the treasury?

Mr. CURTIS—Not after it has come absolutely within the power of the State.

Mr. FOLGER—Well, this provides only that the funds, after they come into the treasury shall be invested. Why the necessity, if none has ever been lost?

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Mr. CURTIS—There seems to be a great deal of uncertainty as to what is being in the treasury.

Mr. MERRITT—I call for the reading of the section, as amended.

The SECRETARY read the section as amended, as follows: "All the State educational funds, as they are paid into the treasury, shall be invested by the Comptroller in the stocks of the State of New York, or of any of the cities thereof, or in the bonds of the United States.

Mr. ALVORD—I believe that the Chair has just decided that the amendment to insert the words, "or the cities thereof" has been lost. It is evident, sir, that the intention of the committee in this matter was that similar losses to those which had been sustained heretofore in the United States deposit fund, should be provided against in the future. I started the idea that when this money got back into the hands of the loan commissioners it would be in the treasury of the State. I was told no, and I have since examined into that matter and I find that there was an absolute appropriation of this money to the different counties of the State for the purpose of being loaned out by the loan commissioners; therefore it has got to be by law restored back before it can come within the strict meaning of being in the treasury, although in the hands of the loan commissioners. Inasmuch as they have left that exactly as it was before, I see a great deal of force in the proposition of the gentleman from Ontario [Mr. Folger], that there is no necessity whatever for this section. Now, I know that this transfer of moneys from one fund to another happens very often in the Comptroller's office. Here are a hundred or two hundred thousand, or perhaps a million of dollars, belonging to different funds. One fund has stocks based upon it due on a day certain. There is a payment to be made from that fund, it is short of money, but on a day not very remote there will be a payment into that fund; so the Comptroller makes a transfer from one fund to the other. The fund to which the transfer is made pays interest, and the fund from which it is made receives interest. This practice avoids the difficulty of the State going outside to borrow money; but if you put the matter under the operation of this section, the result will be that the Comptroller will have no right thus to borrow from one fund for the purpose of tiding over a few days. I trust, therefore, that as the idea of the committee and of the Comptroller, who must have advised them without much reflection, was to protect the funds from depletion, and as that object would not be effected in this way, the gentleman will consent that the section be stricken out.

Mr. A. F. ALLEN—It seems to me that the section is evidently proper. In the last report of the Comptroller there is shown to be over a million of dollars lying idle, and it seems to me that that money should be invested on interest.

The question was put on the motion of Mr. Folger to strike out the section, and it was declared carried.

Mr. MERRITT—I move a reconsideration of the vote by which the latter portion of the fourth section was stricken out.

Mr. DEVELIN—I object.

Mr. KETCHAM—I move that we adjourn.

The question was put on the motion of Mr. Ketcham, and it was declared lost.

The question recurred upon the adoption of the article as amended, which was declared adopted, and referred to the Select Committee on Revision.

Mr. WALES—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Wales, and it was declared carried.

So the Convention adjourned.

WEDNESDAY, January 22, 1868.

The Convention met pursuant to adjournment.

Prayer was offered by the Rev. J. C. WELLS.

The Journal of yesterday was read by the SECRETARY, and was approved.

Mr. VAN COTT presented three memorials from the physicians and surgeons in the city of New York against the abolition of the metropolitan board of health.

Which were referred to the Committee of the Whole.

Also, a memorial from various life insurance companies in the city of New York upon the same subject.

Which took a like reference.

Mr. CURTIS presented a remonstrance from all the fire companies of the city of New York, with the exception of four, against the abolition of the fire commissioners in that city.

Which was referred to the Committee of the Whole.

Mr. COLAHAN presented a memorial from forty physicians in Chautauqua county, asking the Convention to provide for a uniform system of licensure and pharmaceutical regulations.

Which was laid on the table at the request of the mover.

Also, a memorial from forty-five medical practitioners of Allegany county, in reference to the same subject.

Which took the same course.

And also a memorial from thirty medical practitioners in the county of Orange on the same subject.

Which took the same course.

Mr. HAND presented a petition of thirty-two physicians of Broome county, asking for the establishment of a medical board.

Which took the same course.

Mr. BERGEN—I ask leave to submit a minority report from the Committee on the relations of the State to the Indian tribes resident therein.

The SECRETARY proceeded to read the report as follows:

1. They object to the Legislature being authorized "to provide for an equitable subdivision of a necessary and sufficient portion of the several Indian reservations" for their use and occupation in severalty, as provided in the second section of said report, without their consent being first obtained.

2. Believing that the white or Caucasian races are alone capable of self-government, and that they alone have shown the ability to sustain a

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republican form of government and arriving at a high degree of perfection, as a principle, they object to conferring the rights of suffrage to any of the colored races, as provided in the third section of the report. They admit that the Indians, the original owners of the soil, have a better claim to these rights than any other of the colored races, but conclude that if the door is opened for them it may lead to the opening of it to the African, Mongolian and other colored races.

3. Private property, or the lands of individuals in this State, never having been allowed to be taken for manufacturing and other private purposes without the consent of the owners, as provided in the fourth article of the majority report, we cannot consent to the lands or property of the Indians being taken for these purposes without their consent.

Dated January 21, 1868.

TEUNIS G. BERGEN.
SOL. TOWNSEND.

The report was referred to the Committee of the Whole and ordered to be printed.

Mr. McDONALD—As a member of the Committee on Indian Affairs, I declined to sign either report submitted, for the simple reason that, according to the best information I can get, this State has no jurisdiction whatever of the Indians at all. The United States have decided that they have the entire jurisdiction over them, and, if that be so, I suppose the State should have nothing to do with them.

Mr. COLAHAN—I offer the following resolution, and ask that it lie on the table:

Resolved, That there be a special committee of three appointed to consider and report to this Convention a system of licensure of medical practitioners and the establishment of proper pharmaceutical regulations in this State.

Which was laid on the table at the request of the mover.

Mr. FOLGER—I ask that the report of the Committee on Cities be considered in Convention, and that the Committee of the Whole be discharged from the consideration of it.

Mr. VERPLANCK—What is the object of the request?

Mr. FOLGER—Simply to save the time of the Convention.

SEVERAL DELEGATES—I object.

The PRESIDENT—Objection being made, the motion of the gentleman from Ontario [Mr. Folger] cannot be entertained.

The Convention then resolved itself into Committee of the Whole on the report of the Committee on Cities, Mr. RUMSEY, of Steuben, in the chair.

The SECRETARY proceeded to read the report of the Committee on Cities, being document No. 112.

The reading of the report being concluded, the SECRETARY read the first section as follows:

SEC. 1. The chief executive power in cities shall be vested in a mayor who shall be elected by the electors of the city and shall hold his office for three years. He shall take care that the laws and city ordinances are faithfully executed. He shall receive, at stated times, for his services a compensation to be established by law, and which shall neither be increased nor diminished during the period for which he shall be elected. He shall not receive during that period, any other emolument from the city. He shall hold no other office and shall be ineligible for the next three years after the expiration of his term.

Mr. MORRIS—I move to strike out all after the word "office" in the ninth line. I am opposed to placing this restriction upon the re-election of the mayor of a city.

Mr. HARRIS—No more important question has claimed the attention of this Convention than the report now under consideration. Of the four millions of people in this State, a million and a half reside in cities. Every census shows that this portion of our population is increasing more rapidly than that of other portions of the State. In 1830 the population of New York was only ten in every hundred of the population of the State. In 1860 it was twenty-one in every hundred. The day is not distant when one-half of the people of our State will be found in its cities. The question of good government in cities is one, therefore, which deeply concerns us all. It demands the serious reflection and the resolute action of the members of this Convention. While a great diversity of opinion exists as to what shall be done, all agree in one thing; that municipal governments in this State are exceedingly imperfect and inefficient. It has been said, and perhaps with truth, that "in proportion as cities increase in population, their governments become corrupt—their officers inferior—the administration of laws and ordinances lax and defective, and a general tendency toward weakness and demoralization is exhibited." This admitted degeneracy has undoubtedly reached a lower depth in New York than anywhere else. This condition of things must be changed. This degenerating tendency must be arrested. Municipal affairs must be placed in the hands of better men—men of greater ability—more public spirit—more private virtue and moral worth. The government of the city of New York, especially, should be placed in the hands of men eminent for business talent and integrity — the first men in their several spheres. "There is no city of equal size on the earth," says a popular review, "which contains so great a mass of public spirit and administrative capacity, and we feel persuaded that the time is near at hand when those great qualities will be successfully exerted in rescuing the metropolis from the hands of the spoilers who have stolen into possession of it." There is no reason why the common council of New York should not be equal to the best legislative body in the world. The city abounds with men fitted for such a service, and, upon just conditions, they can be won to its performance. "Think what the government of such a city might be and do," says the same writer, "what noble institutions it might found, what grand experiments undertake, what beautiful edifices construct, what merit employ and reward." When the Constitution of 1846 was framed, the entire territory of the State was separated into counties, towns, cities and villages. These were the only

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civil divisions then known. They had been coeval with the government itself. The State had never existed for a moment without them. All our thoughts and notions of civil government are inseparably associated with these divisions. They are permanent elements in the frame of government. They are so treated in the Constitution itself. Indeed, the State is but an aggregate of counties, towns, cities and villages. To these civil divisions, the present Constitution, (article 10, section 2), assures the right of self-government. To counties, towns, cities and villages it guarantees the right of choosing their own local officers and conducting their own local administration. It was supposed that the Legislature could not, by changing the name, or by uniting several counties together, and calling them a district, take away this substantial right. And yet this has been done. Indeed, it was the primary object of the metropolitan police act. That act deprived the electors and local authorities of New York and Brooklyn of the power to appoint or elect the officers and members of the police force, and gave it, with all its patronage, to the central government of the State. The expenses were chargeable upon the taxable property of New York and Brooklyn, in proportion to the police force required for each city. In short, the officers were local; their duties were local; their support was a local charge; but the power of their appointment and removal was not local. The patronage was assumed by the central government of the State. The metropolitan police act became a law on the 15th of April, 1857. It was the beginning of an attempt to transfer the control of the city government of New York to the State Legislature. The expedient, justified, it was thought, by the urgent necessity of the case, has proved a failure and must be abandoned. It is false in principle, ruinous in policy, and cannot be upheld. It may not be abandoned now. I am not sure that this Convention is prepared for the change. When or how it will be abandoned I do not know, but that it will be abandoned I am very sure. Even if the change effected by this act were desirable and useful, it was a severe blow at the inherent love for home government, for local administration, which has always been a characteristic of our people. A police officer under our system is a local officer, a city, county, town, or village officer. He never was any thing else. His functions are local, not general. The preservation of the peace, the maintenance of order, the arrest and punishment of offenders, are offices purely local, not general, and have never been confided to officers other than local. A State police, with its chief at the seat of government, and its agents and ministers distributed over the State, is a thing unknown and alien to our system. It will never be tolerated. The principle of the metropolitan police act is in conflict with the principles of the Constitution. It takes from the local communities embraced within the district created by it, rights and privileges which the Constitution intended to secure to them. It substitutes the power of the Legislature for that of the electors. Those communities are excluded from the exercise of rights and privileges which had always before been exercised by them, and which had never before been questioned. There is nothing in the debates of the Convention nor in the Constitution itself which indicates the slightest intention to leave the Legislature in possession of such a power. It was a leading purpose of the Convention of 1846—manifest throughout all its work—to decentralize the powers of government, and to distribute the powers which had been wielded at Albany among the local communities of the State. The constitutionality of the metropolitan police act was sustained solely upon the ground that it created a civil division territorially greater than those mentioned in the Constitution. It was conceded that the Constitution vested in these smaller divisions the exclusive right to elect or appoint their own local officers. The eminent judge who pronounced the judgment of the court says: "If the provisions of the statute had been limited, territorially, to the city of New York, it would be in conflict with the section of the Constitution so often referred to." I am not disposed to question the soundness of this decision, but I may be allowed to say that the distinction upon which it is supported has always seemed to me to rest more in names and forms than in the essence and substance of things. It is worthy of remark that three of the eight judges who constituted the court are members of this Convention. Two of these—Judge Paige and Judge Bowen—have concurred in the report under consideration; the other—Judge Comstock—did not concur in the judgment of the court of appeals. The present condition of things in New York, resulting from the intermeddling of the Legislature during the last ten years, is truthfully described in the article from which I have already quoted. Says this writer:

"The interference of the Legislature has, at length, reduced the city government to a condition of political chaos. The mayor has been deprived of all controlling power. The board of aldermen, seventeen in number, the board of twenty-four councilmen, the twelve supervisors, the twenty-one members of the board of education, are so many independent legislative bodies, elected by the people. The police are governed by four commissioners, appointed by the Governor for eight years. The charitable and reformatory institutions of the city are in charge of four commissioners whom the city comptroller appoints for five years. The commissioners of the Central Park, eight in number, are appointed by the Governor for five years. Four commissioners, appointed by the Governor for eight years, manage the fire department. There are also five commissioners of pilots, two appointed by the board of underwriters, and three by the Chamber of Commerce. The finances of the city are in charge of the comptroller, whom the people elect for four years. The street department has at its head one commissioner, who is appointed by the mayor for four years. Three commissioners, appointed by the mayor manage the Croton aqueduct department. The law officer of the city, called the corporation counsel, is elected by the people for three years. Six commissioners, appointed by the Governor for six years, attend to the emigration from foreign countries. To these has been

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recently added a board of health, the members of which are appointed by the Governor. Was there ever such a *hodge-podge* of a government before in the world? And nowhere is there any adequate provision for holding these several powers to their responsibility; consequently, although the system of plunder has now been in operation for sixteen years, during which the public thieves have stolen not less than fifty millions of dollars, not one man of them has ever been punished, nor even been made to disgorge."

Nothing can justify the State government in thus intermeddling with the local concerns of the city of New York but the fact that the people of that city are wholly incapable of self-government. There are men, perhaps many men, who honestly believe that this is so. This belief has been encouraged by artful men desirous of securing the patronage of the city government. The topic has been dwelt upon, year after year, until it has been exaggerated out of all due proportion. In this way laws have, from time to time, been passed tending more and more to the complete disfranchisement of the city. Taxation has increased during these ten years of State interference to an incredible extent—from eight millions to twenty millions and upward. This enormous amount is no doubt to some extent attributable to the unparalleled growth of the city. Increased expenditures, corresponding with the rapid increase in population, wealth and business, might reasonably be expected. But this great increase cannot be accounted for by referring it to this cause alone. Of the entire amount raised for the annual support of the city of New York, more than three-fourths—seven dollars out of eight, it has been asserted—are disbursed by those who hold their appointments under State authority, and who are in no way responsible to the people of the city, if indeed they are responsible to any body, for the amount or the manner of their expenditure. Certainly the amount expended under the control of the city authorities is comparatively small. Taxation without representation, seems now to be the rule. The tendency of the legislation affecting the city of New York for the last ten years has been to check and chill that healthy public activity without which neither fidelity nor energy can be expected in the administration of public affairs. The people of that city have been put in a state of isolation and irresponsibility as to their own municipal government. The city is governed more like a province than as an integral part of the State. The great majority of the people feel that their right of self-government has been invaded, that they are deprived of privileges which, from the earliest civilization, have been allowed to the inhabitants of cities—privileges which have not been withheld even in the most despotic governments of continental Europe. They complain that in this age, characterized by the unlimited extension of popular suffrage, our great American city, the metropolis of the western continent, has been made the first example known in a free country of the denial of the right of managing its own affairs. The opposition to this state of things is becoming more and more demonstrative. Who can wonder at the irritation and discontent which it has produced? The only corrective of these evils will be found in the restoration to the citizens of New York of the right to select their own public agents and to regulate the disbursement of their own money in their own way. No effort to reform city governments through the agency of the State Legislature can be successful. No reformation can be effected by taking out of the hands of the people all control over the acts of their own public officials. Such legislation must certainly be pronounced shortsighted and impolitic. It is sure to aggravate the very evils it is intended to cure. It is in direct violation of the fundamental principles of our American system of government. It is in direct conflict with the instincts and sentiments of the American people. Every government is made up of local communities—towns, villages, counties, cities. It is the right of all such communities, whether they are scattered like rural communities, or compact like mercantile and manufacturing communities, to manage and control their own local affairs in their own way. None will deny, I think, that this is a cardinal principle of free government. No people can be truly free, whatever the name or external form of their government, whose institutions are such that their welfare is made to depend, not upon themselves, but upon the fidelity and capacity of a select number of individuals exercising authority over them. To the extent that the central government interferes in the management and control of local affairs—to that extent it is a despotism. It may or may not be oppressive; whether it be or not will depend chiefly upon the personal temper and disposition of those who hold the reins of power. But however this may be, it is not a free government. However artfully it may be disguised, it is a despotism. What better illustration of the exercise of despotic power can be found than is presented in the act of the Legislature of 1867, which compels the tax payers of the city of New York to raise $199,500 for the benefit of some twenty-three or twenty-four benevolent and charitable institutions. It has been well said in the report of the minority of the Committee on the Powers and Duties of the Legislature, that "were the Legislature thus to interfere with the people of the rural districts, and their property, and compel them to raise money for such charitable objects as it might deem worthy of relief, there would be a cry of indignation from one end of the State to the other; but so long as the power is exercised only over the citizens of New York, it does not seem to excite any special interest on the part of the people of other portions of the State." A freeman—and, thank God, we have none else but freemen in this country now—cannot allow his affairs to be managed by others without his consent. He feels that by virtue of his being a free man he is invested with the right and charged with the responsibility of doing whatever his own individual welfare demands—that he cannot be divested of this right and responsibility without surrendering his title of a freeman, and least of all, can he, as a freeman, consent to have his affairs managed by those who are set over him by an assumed independent authority. The same is true of every local community—as a county, town, city or vil-

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lage—such a community, in reference to every thing in which its people have a common interest, has a right to manage its own affairs in its own way. No other man, no other body of men, has the right to interfere. It cannot be free, nor can it maintain free institutions if it is compelled to allow its own local affairs to be managed, however well it may be done, by others set over it for that purpose. The very simplest idea of freedom involves the ever present consciousness that we have the right to manage our own affairs in our own way. By a further ascending step the same principle becomes applicable to larger communities—the State, the nation. The State has the right to manage those affairs which concern its own people—and this, too, without any interference from the national government; while, on the other hand, to the national government belongs the exclusive management of those affairs in which its whole people are concerned. In the application of this simple and fundamental principle will be found the distinguishing difference between a free government and a despotism. If the government allows men to take care of their own affairs, it is a free government; but if men are compelled to allow others to take care of their affairs for them, that government, whatever its name or form, is a despotism. The doctrine of commissions is, that "the State is a distinct and independent existence, a legal entity," a corporation—apart from the members which compose it, and that this thing, called "the State," has the right to prescribe the limits within which the individuals and the local communities which compose it shall exercise the inalienable right of self-government. All will agree that it is the paramount duty of the State to provide good laws and efficient administration in all its territory and for all its people. Having done this, however, every community, city as well as village and town, should be allowed, unmolested and uncontrolled by central authority, to manage its own local affairs in its own way. There is a class of commissions which are unobjectionable. They are those the duties of which do not involve governmental functions, which give the commissioners power to perform some given specific act, and when that is done the power ceases. There is no objection in principle to a law creating a commission to construct a bridge or a road or a public building, or to locate and embellish a park or other public grounds. These are acts which the government necessarily performs, but they do not affect rights or duties, public or private. I agree, too, that that system of government is to be preferred which practically secures to the people the best results of government. But who is to determine this question? I deny that it belongs to the Legislature to determine whether officers appointed by it and acting under its authority, officers chosen by the people, will best secure the ends of local government. It is a part of the accepted political faith of the American mind that our system of government as it now exists, and without any fundamental change, is destined to be perpetual. How sublimely its marvelous strength and its wisdom, and, above all, the boundless devotion of the American people to it, have been exhibited in the fearful struggle through which our nation has just passed!

Mr. M. I. TOWNSEND—I would like to ask the gentleman a question. Does he deem that it would have aided in our national struggle the cause of those who wished to perpetuate our institutions, if the mayor of the city of New York had had the power, as he expressed the will, to send forward the arms and ammunition that had been prepared for the State of Georgia to combat the general government in the rebellion?

Mr. HARRIS—My friend from Rensselaer [Mr. M. I. Townsend] surprises me. He knows me well. He knows my sentiments, and that he should here, in this public debate, put such an interrogatory to me amazes me.

Mr. M. I. TOWNSEND—Not more than my friend amazes me in the position he takes here.

Mr. HARRIS—But if this system of government is to be perpetual, if our free institutions are to continue and our national independence is to be made secure, individual independence and self-reliance must characterize the people. Every district and locality throughout the land must be allowed the full and free exercise of local self-government. There must be no intermeddling by central authority. The general management of their local affairs—such as police, public works, taxation, and every class of administrative arrangement upon which the common welfare of a local community depends—must be left entirely in their own hands. Every interference with these rights is, in a corresponding degree, a sacrifice of the independence, self-reliance and efficiency of the people. These truths are logical necessities, and it is a mark of the empirical mode in which political subjects are sometimes handled to find men, who recognize the importance of allowing the people every where to manage their own local affairs for themselves, still gravely arguing for a central control in some particular and special matters. Such men have generally some scheme of their own which they seek to advance; and while they would not deprive the people of the right of managing their own affairs, generally, they find some pretext for making their particular scheme an exception to the general rule. But such a proposition can never be consistently advocated by a disinterested statesman. An individual is sometimes incapable of taking care of his own affairs. We call him an imbecile, and award him our pity. But such a condition of things can never be predicated of a community, large or small, compact or sparse, city or town. Incapacity to manage its own affairs, in such a case, is simply an impossibility. It may not manage them as well or as wisely as we think we could ourselves, but that is a question which belongs to them, and not to us, to decide. The inhabitants of cities, it will be conceded, have the same rights of self-government as those of other parts of the State. It is as much an invasion of those rights to interfere in the government of the city of New York as it would be to interfere in the local affairs of any town in the State. So far as the right of self-government is denied to the city of New York, so far the principles of our republican system of government

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are repudiated. We declare that while these principles will do for the country, in great cities they are a failure. We practically deny that all citizens are equal before the law, or that the same rights and privileges are to be secured to all. We assert that our American system of government is well enough when confined to the government of the State and the nation, but that in the government of cities, it is "an alarming failure, and a national disgrace." It is not to be denied that in large communities, like the city of New York, where the vicious element so much prevails, and where it exerts a great, if not a controlling influence in local politics, great evils exist in consequence of the lax administration of municipal government. But these evils are not so dangerous as those other mischiefs which must follow when the power of self-government is taken from the hands of the people, and boards are substituted, holding their appointment from the central power, called "the State," and in no way responsible to the people over whom they exercise authority.

"In New York city," says a leading journal, "we have suffered from the vagaries of a small but impudent and active faction of theorists who succeeded, by dint of unparalleled effrontery, in obtaining indorsement of their vagaries at Albany. Denying the democratic theory of government, and distrusting the efficacy of appeals to the people, these philosophic politicians have had one sovereign remedy for all disorders—the Brandreth pills of political economy—certain to cure any disease which affected communities, and that was to create commissions under their control. The consequence is, that instead of laboring in New York to reform and purify popular sentiment and achieve desired results at the ballot-box, they have step by step encroached upon the municipality, destroyed its franchises, and taken away its rights. This idea of central supervision has extended to the most minute details of administration, so that it has come to be a maxim that the people are not to be consulted at all in reference to their own affairs. That the Legislature at Albany will not only appoint their police and protect their health, but will likewise sell their markets and clean their streets, and build their wharves, and do whatever else may be necessary for the control of their property, and the assumed protection of their interests."

The people of the city of New York, as well as other communities, have a right to demand that they be left free to govern themselves. The power of self-government, so far as it has been withdrawn from them, ought to be returned. Those franchises, which by the very nature of their organization, belong to them, should be restored. With such wise safeguards and precautions as shall best secure its proper exercise, the people should be allowed to enjoy the same political power as the people of other portions of the State. The whole system of commissions is in opposition to the democratic theory which lies at the basis of our institutions. That reforms have sometimes been effected by this instrumentality need not be disputed. But such reforms have not been so great or so beneficial as to justify, or even excuse the State government in depriving the people of those prerogatives which, under our theory of government, they justly claim as belonging to them. Against this policy of stripping municipalities of the right to govern themselves, thoughtful men of all parties protest. It has already wrought the most serious mischiefs, and, unless it shall be arrested by this Convention, the principles of republican government, as applicable to large communities, may be greatly endangered. It is not right, and of course it is not wise, to govern a city like New York by boards of officers created and appointed at Albany. The voters of New York have the right to say, with reference to all matters of municipal administration, who shall rule over them; who shall disburse the taxes they pay, and who shall manage their property. If they make mistakes, it is their own business. If they suffer themselves to be misled by bad men, and to be subjected to corrupt combinations, as no doubt they often do, they must bear the consequences. The very fact that they are made to do so will the sooner work a reformation. The article presented by the majority of the committee materially increases the power and responsibility of the mayor. It gives him, in his sphere, substantially the same authority and power as the President of the United States has in his, and holds him to the same direct responsibility. The system has worked well in the government of the United States; there is no reason to doubt that it would work equally well in city governments. The article defines more specifically the powers and duties of the legislative department. The framers of the Constitution of the United States found their safeguard for liberty and a sufficient guaranty against inefficiency and corruption, in the complete separation of the legislative and executive departments. The article under consideration confines the legislative department of cities—as the Constitution does Congress—to its legislative functions alone. The plan for the constitution of the board of aldermen combines the greatest excellencies with the fewest defects. Example and experience have demonstrated the propriety of making the term of office longer than it now is. It should be a stable and permanent body: At the same time the public voice should be frequently heard in the board. The effect of this would be to make the body feel its responsibility, "to reverence its creator." One great excellence of the plan recommended is, that while the board itself is permanent, one-third of its members are chosen every year. In this choice no portion of the electors is excluded; the voice of the whole body is heard through the annual infusion of new members. In this way, the popular sentiment prevailing at the time of each election, while it does not absolutely control the action of the body, is allowed to exert its proper influence. It is a popular sentiment, coming, not from a portion of the electors only, but from the whole constituency. This yearly infusion of new members into such a representative body is one of the soundest and most democrtic features in our system of government. It insures an annual expression of the sentiments of the people in the body. It is to be regretted, I think, that this principle had not been

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adopted in the constitution of the State Senate. In the single district system which now prevails, and which the Convention have voted to continue, the popular sentiment can only be expressed in alternate years. Another advantage of the plan presented is, that a majority of the board are always men who have become familiar with the duties of their office and the new members annually brought in have the benefit of their experience. Another advantage of immense importance is, that the aldermen elected for so long a term and by the whole body of electors will hold their places by tenures independent, to a great degree, of those influences which are so liable to control the action of the common council as now organized. The article presents a simple, direct, responsible and efficient system of government. It provides for greater concentration of authority and also for greater subordination—more power at the center and more subordination at the extremities. It recognizes the necessity of more official power and energy in the administration of the municipal affairs of great cities. It proposes for the city of New York, what every other portion of the State enjoys, a simple government by the people, a government so arranged that the legislative branch shall transact legislative business and legislative business only, and the chief executive shall transact all the executive business and be endowed with all the power and authority which he needs for that purpose. All experience proves that there is no more fruitful source of corruption and misgovernment than the union of legislative and executive power in the same hands. That is one of the simplest and best ascertained facts in the science of government. To this evil may be traced much of the misrule that has prevailed in New York. That city has had pretty much every kind of government except a simple government of the people. For the greater part of its history its mayor has been appointed by the State authorities. For the last few years it has been ruled chiefly by State commissions; and all this while it has had its board of supervisors and its common council exercising executive as well as legislative powers. Well might the writer from whom I have quoted say that "the interference of the Legislature had at length reduced the city government to a condition of political chaos." There is no reason, I insist, to fear the people—not even the people of the city of New York. They may safely be trusted. Let the city have a simple government after the model of the government of the United States. Let the people elect an executive officer, the mayor, and hold him responsible for the administration of the affairs of the city. Let them elect a city legislature with legislative powers only. Let this be done, and the day of reform, even in New York, will have begun. Under such a system the people can have a good government, if they choose to have it. How desirable this is they have already learned from severe experience. This, in my judgment, is the only cure for the evils which now so imperiously demand a remedy. The only way of safety is to place the responsibility upon the people. If they fail let them feel the evil results of their own folly. Let them see and feel that they can only depend upon their own good conduct, their own vigilance and self-control for good government. I have given this subject the most anxious consideration, and it is my deliberate judgment that this is the only plan which furnishes even the hope of any permanent relief from the evils which now exist. Then, if the citizens of New York, instead of coming to Albany to obtain new commissions, and thus further deprive the city of its power of self-government would direct their energies and time to the selection of the best men to administer their government, the advantages of such a course would soon be revealed. The government of the city would be improved, taxation would be diminished, representation restored to the citizens, a legal and responsible city government, selected by citizens identified with their interests, acquainted with their wants, interested only in the good government and prosperity of the city, would be secured and maintained. I know that the people of New York would have an arduous labor before them. It would task to the uttermost both their wisdom and their patriotism, but it can be accomplished. Men of leisure and public spirit, men of character and ability—and the city abounds with such men—the very best men in the city must unite together for the purpose of reforming the city government. I believe it is yet possible to elect honest and capable men, even in that city. I believe that when the issue shall be presented directly between honesty and capacity on the one hand, and corruption and incapacity on the other, a majority of the voters in New York will be found voting as they ought. No people ever suffered more from the evils of ignorance and untaxed suffrage; from the presence of a large mass of uneducated and unassimilated foreign population. But, on the other hand, no city in the world possesses within itself a greater amount of public spirit and administrative capacity. It only needs that these great qualities should be invoked and successfully exerted, to rescue the government of the city from the hands of the "spoilers who have stolen into it." To accomplish this desirable end the free representative machinery, which is the sheet anchor of our American system, must be allowed to operate in the city of New York, as it does elsewhere — untrammeled by any interference of the State government, and to bring to the surface and secure the aid of the best men of the city, so that the common council shall be a representation of the wealth, the intelligence, and public spirit of her entire people. But this can never be done until the attempt to govern the city at Albany shall be entirely abandoned. The Legislature cannot be trusted with this duty. The reform must be radical. It must begin at the bottom and work its way up. If the city cannot govern itself now it must learn how to do it, and the only way to learn how to do a thing is to do it, or at least try to do it. Commissions are inherently objectionable, as an agency of government. Their tendency is to destroy free institutions. The rights and responsibilities of freemen are undermined and set aside; the institutions of self-government are reduced to mere forms and names, without character, dignity, influence or efficiency. This is the result which is gradually

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being worked out by this blighting system in New York. From its first inception, those who live by it—as might naturally be expected—have been constantly seeking to stretch and enlarge its powers by statute after statute, the effect of each being to fetter and restrict still more the rights of the citizen, and to narrow still more the scope for the exercise of his right of self-government, and thus to make places for still greater numbers of functionaries at the expense of the people. It is claimed, and perhaps with truth, that under this mode of governing by commissions, men of more character and ability are selected than are usually elected to corresponding offices in city governments. The mode of appointment seems calculated to give dignity to the office, and, as a general rule, to secure, a higher class of men than are to be found in elective offices of a similar grade. It might, with equal truth, be said that the same mode of appointment would secure better men—men of more ability, greater experience, more distinguished for their integrity and virtue—for seats in the municipal, and even in the State and National Legislatures—perhaps I might add, in a Constitutional Convention. The great objection to this whole system is, that it is a direct encroachment upon the fundamental principle of our government—the noblest principle for which a people can contend. It breaks up that direct relation which, according to our American system, should exist between a people and their rulers. It tramples upon the inherent right of the people to choose their own rulers—a right which it is the great purpose of our government to guarantee and protect. Upon this same subject it has been said:

"There is a class of men in New York, not very numerous, but remarkably enterprising and indefatigable, who make these commissions the tender of their schemes, and the instruments of their ambition. Organized in a compact body, welded together by the cohesive power of pecuniary profits, and acting in secret concert—they are able to wield an influence entirely disproportioned to their numbers or their character. Is a street to be opened, there must be a commission; is a market to be sold, give them a commission; if a wharf is to be repaired, it can only be successfully done by a commission. A commission means a board of pampered officials, who are highly salaried for doing comparatively nothing; it means a retinue of over-fed lawyers and well-kept retainers of every sort; it means a secret league to do the public's business, without taking the public's advice—and to pocket the public's money without asking the public's consent. This practice has grown to be a great and grievous evil. It has but exchanged one form of mismanagement for another that is worse, and substituted for a ring that was in some sense amenable to popular discipline, a ring that lives and breathes, and has all the vitality of its being by virtue of a central political authority."

It is provided in the article under consideration that the term of the mayor's office shall be three years, instead of two, as it is under the present system. The duties of municipal officers in large cities require so much knowledge of details and such familiarity with complicated facts and business arrangements, that longer terms of office are desirable than in the case of State and national officers. It is obvious that officers whose business it is to attend to matters of executive and ministerial detail should not be changed as often as State or national representatives. As things now are, it may well happen that before an officer becomes thoroughly acquainted with the duties of his office, his term expires and he is displaced by another. And besides, the people of New York are pre-eminently a busy people. There is danger, if these elections are too frequent, that those citizens who are actively engaged in business, and who are not politicians by trade, will become tired of them, and instead of making the earnest effort required to secure good officers, will stay away from the polls altogether. The article also greatly reduces the number of elective offices, and increases, in a corresponding degree the appointing power of such as are elective. The mayor and chief financial officers, and the members of the city legislature, are the only municipal officers who are made elective. Under the present state of things, when long lists of candidates for subordinate positions are presented to the voters, they are liable to be puzzled and perplexed with names they never heard before. With the limited number of aldermen proposed by this article, and their election by general ticket, and for a comparatively long term, there is reason to believe that more dignity will attach to the office, and a much superior class of men will be secured for the position. The effect of this change will be to introduce into the common council a more independent element and a higher sense of duty, and thus effectually expose and defeat those jobs and rings which have so degraded the municipal government of New York, and which no mayor has hitherto been able successfully to resist. It is not too much to hope that a board of aldermen thus constituted will become a high-toned, intelligent and independent body, and that the superior character of the men thus brought into the service of the city will command the confidence of the community and furnish a sure guaranty against the extravagance and corruption which now characterize the common council. Such a city legislature would stand high among the parliaments of the world, and contribute powerfully to the prosperity of this great and noble city. Upon this subject a leading member of the New York press, in an article reviewing the report of the committee, uses the following language: "The guarantee for responsibility, for fidelity, for conscience, in a body created, as it is proposed to create the board of aldermen, may not be perfect, and a large class of our best citizens have long been accustomed to urge the necessity of establishing some sort of property qualification: and yet the practical difficulties in the way of restricting the municipal franchise have always been found to be of a very serious kind when any attempt has been made to reach the details of a qualified *suffrage* scheme."

"No property owner, however, in New York but will admit that in constituting the board of aldermen as is proposed a far higher order of candidates than we have recently known will aspire to the office. Men of position and means

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—possessed of any degree of public spirit and energy—will not think it beneath them to sit in a select body of twelve in the highest branch of the legislature, deriving their power and authority from the electors at large and holding their seats for double the term of State legislators or Congressmen. Property, in the board of aldermen, ought at least to have a fair and ample representation, and that, too, without any invidious encroachments upon the franchise rights of the poorer class of citizens."

Another popular journal in the city of New York, in referring to this branch of the report, says:

"Making the term of the mayoralty three years instead of two is a beneficial change. The modification of the board of aldermen is also thorough and complete. It makes it within the power of a majority of voters to elect an executive and the chief branch of the city legislature who shall represent the same principles and work in harmony together. The aldermen will not be elected by districts, but on a general ticket for the whole city, and for a term of four years instead of two. In the board of councilmen there is no special change except that they are to be called assistant aldermen, as in former days."

It is proposed to give to the mayor the sole power of appointment and removal of all executive officers. So far as the language of the public press in the city of New York can be regarded as an expression of popular sentiment, this provision meets with general and emphatic approval. In alluding to this feature in the report an influential journal says:

"This is right, as we have seen the corrupt and insolent use the aldermen make of their present participation in the mayor's appointments. The power over executive appointments given to the upper house of legislation is a weak spot in our Constitution, and not to be extended to cities where prompt concentration and the vigorous exercise of power is often so essential. It is most essential to a good city government that it should be efficient as well as safe; and for this it is necessary to unite large trust with weighty responsibility, and that these should be proportioned to each other. Then they secure both ends—vigor and fidelity."

In reference to the enlarged powers which it is proposed to confer upon the mayor, the same article says:

"They—the committee—have gone very far toward what we hold to be indispensable to the existence of a really effective government, by concentrating the larger part of the executive administration in the hands of the mayor and subordinates deriving their authority from him. It is an important step in the right direction. We rejoice in it as one omen for good, as the beginning of a development of common sense and sound principles in the Convention; as an indication that at length statesmen are opening their minds to the conviction of the safety of trusting the people with the power of controlling their own government."

Upon this subject, another journal also says:

"The changes in the government of this city recommended by a majority of the Convention committee are good as far as they go. The mayor ought to have the substance along with the shadow of executive authority; and it is a decided improvement to give him the exclusive power to appoint and remove subordinates. At present the aldermen virtually control all the offices not filled by election, because they can refuse to confirm the mayor's appointments until he names a man who meets their somewhat peculiar views. The mayor, under the new order of things, will have full sway over every municipal department except that of finance. The proposed abolition of that useless and very costly body, the board of supervisors, will throw a load of new duties and responsibilities upon the mayor's hands, and the office, with its enlarged field of labors, will be quite worthy of the ambition of our ablest citizens. Tax payers, and the great number of quiet voters who have been in the habit of keeping away from the charter election, will now have a powerful motive for coming out and electing a mayor who can protect their interests."

The Brooklyn *Union* also says:

"We regard the principle underlying this report as a sound one. We believe that in Brooklyn it would work well—that our citizens have remaining enough self-respect, courage and integrity to sustain their interests under it. The responsibility of one man for the administration of the government—the idea of a body of legislators elected by a large constituency for a long term—and the system of separated elections for municipal affairs, are commendable."

Before commissions were established, the government of New York was divided between the city authorities and the board of supervisors. Each had power to levy taxes. The city authorities were not responsible for what the supervisors did, nor were the supervisors chargeable with the abuses of the city authorities. Between them both, as might well have been expected, the affairs of the city were sadly mismanaged, and the people greatly overtaxed. An appeal was made to the Legislature to interpose and correct the abuses. It assumed the task—I have no doubt it was with the best and most patriotic intentions. By a series of special acts, beginning in 1857, it has taken a large portion of the affairs of the city out of the hands of the people, and transferred it to special commissions appointed by the Governor. From its first inception, this system of commissions has been making gradual inroads upon the inherent right of the freemen of New York to govern themselves. Statute after statute has been passed, the effect of which has been to lessen more and more the character, dignity, influence and efficiency of the local government, and to expand the powers of a few functionaries who are so fortunate as to hold places under this new system of government. Thus the authority which had before been divided between the city authorities and the board of supervisors, has been again divided among a large number of commissions which are responsible to neither the board of supervisors nor the city authorities. It is easy to see how matters might become much worse under such a triple-headed government, but it is not so easy to see how they could be improved by the change. The experiment which has thus been tried for ten years has most sig-

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nally failed. Let me say to my political friends and associates that we cannot afford to continue it. The right of local self-government cannot always be denied with impunity. Commissions have had their day—let them be abandoned. Let the State government cease to interfere in the affairs of cities any more than it does in the affairs of other localities. We profess to believe in the right and the capacity of the people to govern themselves. Let us act upon that profession and allow the cities, as well as other portions of the State, to exercise that right. Let the Convention give to cities, New York as well as others, a simple form of municipal government. Let the whole control of municipal affairs be vested in a city government, with a mayor at its head who shall be endowed with the substance as well as the shadow of executive authority, and who shall be directly responsible to the people. If such a government shall fail to correct the abuses which still exist, it will be the fault of the people themselves. If nothing more, it will have the effect to confine the existing evils to the limits of the city, instead of making them co-extensive with the State, as the present system is doing. The charter of the city of New York needs careful revision. Its great defect is a want of unity and subordination in the different branches of the government. The powers and duties of each department should be specifically defined; safeguards against fraud, and more adequate means of detecting and punishing official delinquency, should be provided; a sterner and more detailed system of accounting in respect to financial affairs should be adopted; the legislative and executive powers should be more clearly distinguished, and the duties of each distinctly defined; the distinction between city and county taxes, accounts, and expenditures, should be entirely abolished; the line between city and State authority in relation to city affairs should be more accurately drawn — in short, there should be a complete and thorough codification of the laws relating to cities. For myself, I attach very great importance to such a revision, as a most effective measure of reform. Such a code of laws for cities, would, to a very great extent, prevent applications for special legislation, and thus remove a fruitful source of corruption. "The whole system," says Mayor Hoffman, in one of his messages, "commencing with the charter, and running through all the commissions, is the worst that could be devised." He adds, "With a well devised charter we can have the best local government in the land." It has been said that more than one-third of the time of every session of the Legislature is devoted to the affairs of the city of New York. The annual controversy over the tax levy presents dangerous opportunities for corruption and bribery. It is obvious that it must exert a most demoralizing influence upon the members of that body. They are allowed to appropriate enormous sums of money, to which neither they nor their constituents in any way contribute. These fearful evils must go on increasing from year to year, unless by some constitutional provision the power now annually exercised by the State Legislature over city financial affairs shall be restrained. When the city elections should be held is a question upon which a difference of opinion will naturally exist. There are some considerations which favor the plan of having all the elections for the year, national, State and municipal, take place at the same time. The citizens would more generally give their attention to such an election. A larger vote would thus be secured, and the merits of candidates would be more likely to be carefully scrutinized. The expense, too, would be materially diminished. On the other hand, if the city elections are separated from the State and national elections, the local affairs and interests of the city will be less affected by State and national politics, and the attention of the citizens will be more exclusively given to their own local interests. Each plan has its advantages. But it is very clear that if both the city and State elections are not to take place at the same time, they should be separated as far as possible. The separation of the government of New York into city and county departments, is obviously a great defect. All agree that the board of supervisors should be abolished. Its existence renders two sets of officers necessary. Double accounts must be kept and two annual tax levies must be made. The city and the county of New York being the same in territory, in population and interests, there can be no advantage in maintaining two distinct systems of government. The public has long been aware of the evils and abuses to which I have referred. They have long existed. The most injurious consequences have resulted from them. The interposition of this Convention is unquestionably necessary in order to secure an adequate remedy. Such alterations should be made in municipal governments as will make them more popular and render them more efficient and useful. The inhabitants of these great communities have a right to expect at our hands some measures which will relieve them from the abuses which have so long preyed upon their vitality—measures which shall effectually contribute toward the maintenance of tranquillity, the security of property, the encouragement of industry, and the preservation of public freedom. To secure these important ends has been the controlling object of the committee. The reforms they recommend are intended to establish a more intimate connection and sympathy between those who are invested with the powers of government and those who are liable to its burdens; to subject municipal corporations to vigilant popular control. In this way, it is hoped to effect a safe, efficient and wholesome reform of these valuable and indispensable institutions.

Mr. FRANCIS—Mr. Chairman, I approach the discussion of this question with a profound sense of the magnitude of the interests which it involves, and of the direct bearing it has upon the welfare of more than one million of the people of this great commonwealth.

CITY GOVERNMENT.

The governments of cities—what shall they be? What can we do to insure a better system? Is a uniform plan, whatever it may be, practicable? Would it be wise to adopt an article as a part of the fundamental law of the State, unchangeable

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for twenty years to come, that shall establish municipal governments upon a policy of uniformity, and thus render modifications impracticable if not impossible for so long a period of time? These are grave questions that demand the serious attention of the members of this Convention.

THE PROPOSITION TO MAKE STATES OF CITIES.

The chairman of the Committee on Cities has submitted a report which, instead of one section mainly devoted to cities, as in the Constitution of 1846, has sixteen sections. Its effect, if adopted, would be to make every city in the State a little state in itself, independent of legislative authority, and with a mayor whose powers are not limited like those of the Governor of the State, but are as ample as those of an autocrat. If this article goes into effect, New York and Brooklyn will be practically independent states. The State must abnegate its powers and yield its sovereignty to municipalities. To this I, for one, do earnestly object. If it is thought best to sever the connection between the cities and the State, I prefer to have them erected, with the consent of Congress, into new States, according to the legitimate constitutional method. If, however, they are to remain a portion of this State, I insist upon their being subject, like towns and villages, to the general laws that govern the whole State, and especially to the legislative power. I object to this whole article in its form and its spirit, as inimical to the interests of the State, as opposed to the fundamental principles of our government, and as dangerous to the welfare of the cities themselves. The form of the article is more like a legislative enactment than a constitutional provision. It goes into detail, petty detail; whereas a Constitution should deal only in generalities—laying down fundamental principles, and leaving details to legislation. The spirit of the article is equally objectionable. It is a blow at State sovereignty. If cities are to be invested with independent powers, we shall soon be split into fragments. Our cities will be like the ancient cities—not a part of the State, but each city a whole State, and the agricultural districts their tributaries and subjects. New York and Brooklyn will be like Hamburg, and Bremen, and Frankfort, and the so-called free cities of the middle ages. The day has gone by for the establishment of such forms of government. It would have been far better for Germany if its free cities and petty principalities had been long ago merged into one Germanic nation. The spirit of the article is one of past ages. It is a spirit of disunion, and not of union. It is a policy not of unification, but of dismemberment and separation. It is a recognition of the pestilent heresy of State rights, as applicable to the cities—the political ulcer of the republic, which, after festering for seventy years, ripened into secession and burst into open rebellion, and which has cost us four years of bloody civil war to extirpate.

POLITICAL DIVISIONS—THE POLICE DISTRICT SYSTEM.

The tenth and eleventh sections of the article are aimed at the several boards of police. The Legislature is forbidden to divide the State into any other political divisions than those of counties, cities, towns and villages, and no territory is to be annexed to any city except for the purpose of changing its boundaries. We might ask here whether this ill-considered and sweeping clause in the tenth section—and I invite particular attention to this point—does not abolish school-districts comprising parts of different towns in a single district, or parts of towns with villages and cities? It certainly does in terms, and its effect would be, if adopted, to break up more than two hundred school-districts of the State. But if this objection can be obviated, would it be desirable to destroy the police districts, as proposed? I think not. Those divisions are essential to the efficiency of the system. Take the city of New York: The dangerous classes are now hemmed in by the police organization, which embraces with the metropolis, Brooklyn, Staten Island, and a portion of Westchester county—the suburbs of the city. The machinery works harmoniously and with efficiency over the whole district. If the police power were confined to the city proper, it can readily be seen that the suburbs, which are directly identified with New York in business interests and social relationship, and do virtually constitute a part of the great metropolis, would have no adequate protection against the raids of criminals and rowdies. One significant fact may be stated in this connection: The pugilists who make New York city their head-quarters, and whose disgraceful demonstrations and shocking brutalities have been so frequent during the past two years, have not dared to select any portion of the metropolitan police district as the arena for their criminal indulgences. They have gone outside the district to fight it out on their line. This fact in itself is a tribute to the efficiency of the system, which has not only preserved order in the city, but protected the suburbs that are linked to it as a part of one great whole. Why seek to disturb a policy that works so well, and essentially weaken the police organization by destroying the district plan and limiting the field of operations by municipal isolation? Police protection is often necessary on the ferry-boats. One member of our Committee on Cities [Mr. Law], states that he was induced to dispose of his interest in the ferrying business while the old police organization, which was confined to the city, was in force—and how inefficient it was in the city, all know—because there was no proper protection against outrages upon the boats and at ferry landings. All this is changed under the district system of metropolitan police, whose powers are extended over adjacent waters and territory. There is now a power at hand to enforce order and arrest criminals at the ferry landing places and upon the boats. Again, at Staten Island an adequate police force is stationed to protect the river front, and so prevent the incursion of rowdies into the country back of it. My friend [Mr. E. Brooks] may say that he seldom or never sees a policeman in his neighborhood some distance from the river, yet he is taxed heavily for police protection. Well, he has that protection at the river front; the rowdies are not permitted to break through

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the lines and depredate upon the country in the rear. So my friend does not see policemen where they are not needed; but I venture to say that where their services are required for the protection of himself and neighbors, there they may be seen in the faithful discharge of their duty. Now, then, suppose that Staten Island was without this protection—and the same may be said of other suburbs of the city—would any local police likely to be organized be adequate to protect the place from the gangs of rowdies and law-breakers that are liable to invade it? Is not my friend better satisfied to enjoy protection, even if it costs heavily, than to incur the risk of unchecked lawlessness and unpunished crime?

CAPITAL POLICE DISTRICT.

The argument I have attempted to set forth in favor of the district plan of police, as opposed to what I conceive to be the ill-judged recommendation of the chairman of the Committee on Cities, is equally pertinent to the capital police district. Here are villages clustering about two principal cities. Our police has jurisdiction over the cities and their village suburbs. The latter are thus assured of protection which they otherwise could not enjoy. The weaker has the full benefit of the stronger power, whenever it may be necessary to employ it for the arrest of criminals and the protection of persons and property. The district for most part is densely populated, and all have a common interest in maintaining good order and upholding and vindicating the laws. So they are united for this purpose under one system, most efficient and thoroughly administered we know it is, though in other respects distinct from each other as regards local government. It enables the prompt concentration of all the police force of the district, if needs be, to put down riotous proceedings in any one locality therein. It affords protection to the smaller places against raids by the criminal and disorderly classes from the cities. It permits the pursuit of criminals throughout the extent of the district, without interruption to hunt up a justice and secure the indorsement of a warrant if the offender has fled across the river from one county into another. All this red-tapeism is cut away under the district plan, and the old forms of law which delayed and oftentimes defeated justice are put aside for a system that is worked directly to a purpose, and that purpose the maintenance and efficient enforcement of law.

MAJORITY REPORT—PLAN FOR LOCAL DESPOTISMS —VINDICATION OF POLICE COMMISSIONS.

But the main point, the vital feature, of the article reported by the chairman of the Committee on Cities, is contained in the eighth section. It proposes to sweep out of existence our police and all other legislative commissions for cities, and to vest in the mayors unrestricted power in appointing heads of departments, and in removing them "at pleasure." Thus, it will be seen, the one-man power is invested with despotic authority for the government of cities; the mayors are to rule as kings in their respective municipalities; their will according to the article under consideration, is to be the supreme law during the period of their reign. Authority yielded up by the State—its sovereignty abnegated under the specious plea of allowing the cities to govern themselves—and then conferring almost unlimited powers upon mayors to govern as individual will shall prompt them! That will may be influenced by passion, inspired by unworthy ambition, subject to fitful caprice, or directed by a spirit of reckless partisanship—no matter; it is the local king's will, and neither the State with its remaining authority, nor the people in their majesty, can interpose to check the one-man power, nor baffle the will of these our reigning city potentates. There they are, secured in their places by the Constitution of your State, wielding the departments of cities without limitation, and exercising power as their individual will shall dictate. Their agents, the heads of departments, are to be mere machines in their hands, and may be displaced "at pleasure!" This is the sort of self-government it is proposed to be given to cities; this is the plan gravely recommended to this Convention for the "uniform government of cities." I can conceive of no policy more despotic—none more objectionable in form and application—none that would involve dangers so grave to the common welfare of more than a million and a half of people, and to the integrity of our republican system of government. I was struck with inexpressible amazement when the plan was first proposed, and I cannot for one moment believe that it will receive the sanction of this body of intelligent representatives.

MR. MURPHY'S MINORITY REPORT.

The plan proposed in the minority report submitted by Mr. Murphy, from the Committee on Cities, seems to me indefinite and unsatisfactory. All the matters set forth in the two sections presented are proper subjects for legislation, embracing mere detail that should be decided by legislative action, and not by constitutional policy. But in proposing that all city officers shall be elected by the people, or appointed by the mayor with the consent of the board of aldermen, it is designed to destroy the police and other State commissions—in other words, to deprive the State of all power to give protection to persons and property in the cities, all power to enforce sanitary regulations for the purpose of repelling pestilence, all power to assert its own sovereignty within the jurisdiction of these municipalities, however imperious the necessity for its action in the premises. I earnestly protest against this proposed abdication of power by the State, as objectionable in theory and a dangerous innovation upon the policy of our government. The cities derive their corporate authority from the State; these local governments are organized under State laws to promote the convenience and subserve the common welfare of the people of cities. I say it would be impolitic and dangerous to nullify the sovereignty of the State in this respect, and strip it of the power to modify and amend organizations of its own creation.

MR. OPDYKE'S MINORITY REPORT.

The plan proposed in the minority report submitted by Mr. Opdyke, possesses substantial

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merits; still the one feature which the honorable gentleman recognizes as vital, is in my judgment impracticable. It is contained in the third section, wherein it is provided that the members of the board of aldermen in New York and Brooklyn, shall be chosen by such electors as shall have paid during the preceding year a tax on property officially valued at not less than one thousand dollars. I do not propose to argue this question upon its merits; I only say that, in my opinion, the scheme is impracticable for the very good reason that it cannot be carried out. Besides, if its success were possible, why confine its application to New York and Brooklyn? The same reasons that commend its acceptance for those cities, prevail in a degree at least in behalf of other cities of the State, and would certainly have force in respect to the larger cities of the interior, such as Albany, Troy, Syracuse, Rochester and Buffalo. Again, in section 10, it is provided that "the right to provide for the preservation of the public health and to appoint and control the police force of the State shall remain with the State Legislature;" while in section 12 it is provided that the mayor and common council shall determine the amount to be raised by tax, "including police and sanitary expenses." This would render the police and sanitary commissions to a large extent dependent upon and subservient to the municipal authority. The mayor and common council would hold the purse, and dispense and withhold money at their pleasure, and so the State agencies named would be practically under their control. Every commission should have the power, under proper regulations, of raising or requiring the common councils to raise such amounts of money as it requires to carry out its objects. This is vital to the success of the system. Many of the provisions contained in the article of the minority report under consideration strike me most favorably as proper subject-matter for legislative enactment, and I should be glad to join my friend and others in urging the passage of a law by the Legislature to secure that object. But all this detail of policy for city government is, in my opinion, out of place here; it cannot properly be embodied in the fundamental law. Wise as this Convention may be, it cannot anticipate the public wants and necessities for twenty years to come so as to justify its action in settling the details of city governments into permanent systems that legislation for all this period of time cannot in any respect change. Cities are not stationary machines to be worked in one way only. They are constantly changing; they possess the elements of rapid growth; new interests are constantly being developed within them; new policies of government and measures of administration are required from time to time to meet recurring necessities. So I say an irrepealable system, and especially one that forbids the application of State authority when its exercise may be required by the highest considerations of the public good, would be a most dangerous experiment.

LEGISLATIVE COMMISSIONS—THE POLICE.

In reference to the policy of legislative commissions for the administration of some important departments of city government, I have this to say: we have tried the police commission and know that it works well. It has been in operation many years in New York, and who shall say that it has not been a success? Who believes that, under any municipal organization, the people of the metropolitan district, and the hundreds of thousands who are temporary sojourners in the great city every year, would have enjoyed the personal safety and the protection of their property interests that have been afforded them by this commission? Who believes that New York city would have been saved from sack and perhaps utter destruction during the reign of mob terror in 1863, if the well-trained, fearless and efficient metropolitan police had not been in service to resist and fight down the infuriated criminals? Who believes safety and good order would be assured in New York and throughout the metropolitan district to-day if this State institution were abolished, and a police of partisan municipal appointment were substituted for it? This State organization is the power that protects New York to-day, and without it there would be no adequate protection afforded. The stubborn facts of the situation cannot be ignored under any pressure of partisanship; they must be seen and recognized. A police power to be thoroughly efficient and always reliable, must be independent of local political influences. The members of the force must be placed in a position where they may defy those influences, and where they cannot be controlled by them. They have to deal with the dangerous classes—an element that has become formidable in the politics of our larger cities—and they must not feel beholden to these classes, either directly or indirectly, for favors received or rewards expected. And for this reason it is absolutely essential to the safety of New York and its interests, embracing to a large extent the interests of the whole State, that the police commission, deriving its powers directly from State authority, and entirely free from the paralyzing entanglements, and oftentimes corrupt combinations of local partisan cliques and associations, shall be maintained. It is a marvel to me, in view of the records of the past, the exigencies of the present, and the necessities of the future, that any good citizen, whatever his party predilections, can be found to favor a return to a system of municipal police control, by which the safety of vital interests would be constantly imperiled, and the worst criminals be encouraged to ply their vocation with the assurance of old-time immunity from punishment. I have conversed with democrats of New York city—representative men of the party, too—and they have conceded the efficiency of the metropolitan police; they have declared that the public safety would be jeopardized by a return to the old system, and yet, while saying so much, they averred that Governor Fenton had not observed good faith with them in putting a republican upon the commission, when, as they alleged, a democrat was, under precedent, entitled to it; their friends were incensed because of this, and now they could no longer resist the demands of party in opposition to the system, which was in fact

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opposed to the democratic idea of self-government. I put it to you, representatives from New York, and to you, representatives of the country districts that are so intimately connected in business relationship with the metropolis—are these good reasons, such as should have weight with candid minds, for striking down a system that is approved by experience as the best that can be devised for the police protection of a great city and its environs? Shall mere party passion override the great public interests? Shall the petty partisanship of the hour, transient in itself, and often vicious in its tendencies, prevail over the higher consideration of the public good? Are we here to make a party Constitution? Should it not rather be our aim to make a Constitution for the good of the whole people—an organic law creditable to our imperial commonwealth, and promotive of the virtues that attach to a beneficent civilization?

THE CAPITAL POLICE.

The capital police law was passed by the Legislature three years ago, and the system went into operation two years ago last July. That it has furnished this district, and all parts of it, a more vigilant, reliable and effective police than they had ever before enjoyed, admits of no doubt. That its abolition now, and a return to the old policy of separate municipal police organizations for the several places embraced within the district, would be attended with a fearful increase of crime, and insecurity of personal and property interests, I think there can be no doubt. I do not simply express in this my own opinion, but the deliberate judgment of a great proportion of the most intelligent citizens and largest property holders of the district, embracing leading members of both political parties I have received letters on this subject from many of these, and propose to read extracts from the expressions of some of the more prominent. I earnestly crave the attention of the Convention to the proof and the argument which are here presented—all the more confidently asking your indulgence since I have occupied heretofore so little of your time in debate, and the subject now before us is one of transcendent importance to a large and populous district of the State.

ALBANY.

The distinguished and eminent President of the Mechanics' and Farmers' Bank, Thomas W. Olcott, writes:

"I should much regret to have our police commissions abolished. I regard an independent police as vital to its efficient and impartial action in the protection of persons and property."

Thomas Olcott, cashier of the same institution, says:

"By all means have the police commission and the police free from all political alliances."

Hon. Bradford R. Wood, late minister to Denmark, in an earnest letter, urges that the police commissions shall not be abolished, and forcibly adds:

"I know that a new and anomalous doctrine has recently obtained in some quarters that each locality, each city, has a right to a government virtually independent of all legislative influence, and I look upon it as more heretical than the doctrine of State rights as interpreted and carried out by the States lately in open rebellion. It is claimed, for instance, that the government of the city of New York shall be intrusted to the mayor, he to be held solely responsible to the heterogeneous mass that made him mayor, forgetting that he is the representative of a constituency who can and will re-elect him, no matter what he does, provided he does not act counter to the few who control it, and which includes a proletarian population of foreign births, unaccustomed to self-government or self-control, confounding license with liberty; but who, after all, are less culpable than the demagogues of native origin who hound them on and use them for their own purposes. A good and efficient government for our large cities we must have. The people of the State, individually and collectively, have a right to demand it, and the Legislature must see, by commission if need be, that it be done."

A. D. Shepherd & Co., leading merchants of Albany, write:

"In our opinion nothing could result more disastrously to the peace and good order of this or any other city than the placing of the police authority in the hands of the mayors. The growing tendency in our cities to rowdyism and crime is in itself sufficient argument for removing the control of the police entirely from the reach of those whom it is intended to keep in check. We believe the business community in general will look with distrust upon all efforts to return to the old system."

The thought here embodied that the police should be as far removed as possible from the vicious classes, and should, therefore, not be dependent upon the mayor whose election they largely influenced, is well worthy of the serious attention of the Convention. John S. Perry, a prominent manufacturer, writes that if the proposition would insure that the office of mayor shall be filled by men of capacity and strict integrity it would be for the public good. He proceeds:

"But as men of an opposite character are frequently elected to that office, I fear that such an experiment—for it can be nothing less than that—would be attended with great hazard to those who have any thing to lose. The project has my unqualified disapproval. I believe that nine-tenths of the men in Albany who pay an income tax to the government would vote against a measure so full of peril. I hope you may be able to defeat it."

The fatal defect of the majority plan is here presented. If, while giving all powers to the mayors of cities, it could only guarantee the election of good mayors, the objection to the proposition would be, to a certain extent, disarmed. As that is impossible, it is not strange that the plan is regarded with the greatest apprehension by men who have large interests at stake in the good government of our cities.

Dr. Peter McNaughton, an eminent physician of the city, says:

"I am opposed to any amendment in the Constitution whereby mayors in cities shall have the power of appointing the police commission-

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ers or any other. If the Convention is determined to have the people vote the amended instrument down, they have only to retain this despotic clause and the thing is done."

Lemon Thomson, an active member of the common council, writes that in his judgment, where matters of expense are involved, the people should be left to decide for themselves, but that a different principle should prevail where the question is one of enforcing the laws. He adds:

"I should consider it a great misfortune to have the mayor of our city control the appointment and management of our police force. The man filling the office of mayor is so apt to be either a weak or a wicked man—so apt to pander to the worst passions of the worst men—so apt to be willing to sacrifice all that is right and just in order to obtain a little transient popularity, that I cannot consider it wise or safe to place such a large amount of power and patronage in his hands. Our experience as a city fully justifies such fears. It was but a few years ago that our mayor was the head of our whole police force. Witness the unquelled disturbance at the election of the Young Men's Association, and at the election in the ninth ward, when the polls were so blocked that only one party were permitted to vote, and the mayor and police force were present on both of these occasions. So palpable was the outrage in the ninth ward, that the Legislature, after a thorough investigation, declared the election void. Our present police system is a great improvement on the one which preceded it. It is well and ably managed. No one who has lived under the two systems and desires a non-partisan and efficient police that will preserve order and defend the right, would for a moment be willing to return to the old system, or any thing like it."

All of these letters are written under the inspiration of the contrast, plainly seen and felt by their writers, between a system such as that contemplated by the majority report and the system which now exists, and all express the same repugnance to a return to the former. Jared A. Post, a prominent merchant, writes as follows:

"As a member of the Committee on Cities, I hope you will exert all your influence to prevent the amending of our Constitution so as to abolish all commissions—the effect of which would be to deprive us of our excellent and efficient capital police, thereby placing us back under the old system of a partisan police, greatly to be deprecated by all good citizens, and every friend of order and good government."

Theodore V. Van Heusen, of the firm of Van Heusen & Charles, writes:

"We favor our police commission as a plan, and with regard to commissions in general, would never force one upon our people against their wishes intelligently expressed; but deem the city of New York an exception, where it is clearly the fact that the wealth, virtue, and intelligence of the people are outvoted and overborne at the polls, and they need to be saved from their own folly and wickedness."

L. & P. K. Dederick, leading agricultural implement manufacturers, write:

"The better personal character, and the greater efficiency of our present police, as compared with the old appointments by the common council, the greater security in regard to life and property which obtains among our citizens, and the universal satisfaction which prevails, are among the many reasons which can be given to prove the superiority of the police appointed by the police commissioners."

The Hon. Lymain Tremain says:

"The abolition of the police commission for this district I should consider a great public calamity. Since its organization a reform has been effected in this city which has been the theme of general public commendation."

In the course of his letter Judge Tremain cites the opinion of our supreme court, delivered by Judge Nelson, in the case of the People *v.* Morris, 13 Wendell, 331. The eminence of the authority, and the singular pertinency of the opinion to the subject now under consideration, should command great weight for it in the Convention. Judge Nelson says:

"It is an unsound and absurd proposition that political power, conferred by the Legislature, can become a vested right as against the government in any individual or body of men."

Judge Nelson proceeds to say that the power conferred upon corporations, upon the canal commissioners, the canal board, "together with hundreds of other offices in the State," are held by no other tenure than the will of the Legislature. And then he adds:

"The species of power thus conferred is the same as that bestowed upon the inhabitants of incorporated towns, cities and villages. Both are public trusts. The rights are the same to the extent of the power granted. It is obvious that the principle (that political power can become a vested right as against the government) would soon annihilate all government. Indeed, long before this time, if its authority had prevailed nothing would have been left in the administration of the government of the State, subject to the action of the law-making power. The plain solution of this whole matter is, that political power conferred by the Legislature is a public trust to be executed not for the benefit or at the will of the trustee, but for the common weal. How long it shall exist, or in what manner it shall be modified, are questions independent of these depositaries and belong exclusively to the people to determine, in the mode prescribed by the Constitution."

So far as the right and power of the State are concerned, it seems to me that this is conclusive and unanswerable. In this connection I quote from that eminent jurist, Chancellor Kent, in his Commentaries, Vol. II, page 320, in language confirmed by the supreme court of this State, a familiar truth:

"Political corporations are such as are created by the government for political purposes, as counties, cities, towns, villages. They are invested with subordinate legislative powers, to be exercised for local purposes connected with the public good; and such powers are subject to the control of the Legislature of the State." 13 Wendell, 225.

So we here see what the fundamental principle of our government is in respect to the powers of

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cities, as enunciated by the highest judicial authority. It has always been held that the State may exercise supreme control over all parts of its territory, over all its citizens, for the good of all. If the opposite doctrine of municipal independence had prevailed, as remarked by Judge Nelson, "nothing would have been left in the administration of the government of the State, subject to the action of the law-making power," for if cities may have independent powers, and exercise authority above the State, there is no reason why counties, towns and villages should not be invested with like privileges. R. P. Lathrop, in a letter carefully comparing the operations of the police under the present system and under that which preceded it, says:

"I should consider any interference with the capital police a grave public calamity. The proposition to vest absolute control of it in the hands of the mayor, I regard as especially dangerous. Our city has had ample and conclusive experience on this subject. Our police was formerly under the exclusive control of the mayor. At that time its administration was so partisan and corrupt, and the force itself became so utterly inefficient as to be absolutely unendurable. Men of all parties revolted against it: * * * We have now altogether the best police we ever had, and I should regard a return to the old system as a fatal step."

Hon. Emerson W. Keyes says:

"The citizens of the present capital police district, embracing the cities of Albany, Troy and Schenectady, and populous villages and other contiguous and intervening territory admirably adapted to consolidation for police purposes, can bear testimony, from a very bitter experience, to the utter inefficiency of a police system administered by local or municipal authorities. Your own memories here will be more impressive than any suggestion of mine; and recalled with the fervor which a sense of personal peril must impart, will powerfully appeal to the Convention to pause before striking down systems of police organization that have served to bring to populous communities, after years of violence and misrule, a sense of security and peace."

TROY.

The letter which I here present is signed by a large proportion of the business men of Troy, including representatives of all the banks of the city and the largest capitalists of the place. Among the names attached to this paper are those of prominent and influential members of both political parties. The list represents property in the city amounting to more than twenty-two millions of dollars. The letter is addressed to myself and reads as follows:

"*Hon. John M. Francis, Constitutional Convention, Albany:*

"SIR: The undersigned have the honor to acknowledge the receipt of your communication in relation to the report presented by the chairman of the Committee on Cities in the Constitutional Convention, and now pending in that body, proposing the abolition of all commissions for cities, and that all heads of departments shall be appointed by mayors.

"In answer to your desire, therein expressed, to learn our views upon the subject, we have to say in reply that, as residents of the city of Troy, where the capital police commission has been in operation for the past two years, and, in its beneficent administration, has given protection and security to life and property, and afforded the peaceful citizen immunity from assault and injury in attempting to exercise his rights at the polls, and has maintained the public order inviolate, and secured the approbation of all good citizens—the proposition seems strange, reactionary and dangerous; and we respectfully ask that our unqualified disapprobation of it may be made known to the Convention, as the testimony of those who have lived under both systems, and have practical knowledge of the operation of each. We deprecate a police appointed by local municipal authorities, partisan and inefficient, and condemned as good for nothing. We approve of the present capital police, created by legislative authority, demanded as a measure of public safety for the city, not subject to the dictation or caprice of party, or to the turbulent classes whom, from necessity, it was created to control.

"As between the two systems, we cannot contemplate a return to the former without serious apprehensions. Besides, it is not asked for; and may not we, the people, have, or retain, a system which all lovers of good order approve of, demand as a measure of security, and are themselves willing to pay for?

"We would not abate a jot or tittle from the just rights or powers of the people. But in the government of cities the claim for and on behalf of the people of the 'right of self-government in all matters' is more specious and plausible than well founded and practicable. It has never been successfully carried out and accomplished.

"We hold it to be the duty of government on this subject, in the first place, to guard and secure the rights of the good, true and law-abiding citizen and his property, and to maintain good order, before it becomes tender and compassionate toward the vicious and disorderly.

"We do not regard the creation of police commissions as a departure in principle from what has always been the law in this State, but only a more efficient method of executing and carrying out that principle. Out of regard to private rights, the law awaits an overt act of violence before it acts, and then it calls upon the Governor or sheriff to repress it. But it is always better policy to prevent than to cure any disorder. A good police is a preventive remedy for public disorders in cities.

"It is not too much to say that had the capital police been in existence at the time of the July riots in 1863 those scenes which, under our old police system, disgraced the municipal government of this city, and not only spread alarm and put life and property in peril, but, with the uncontrolled fury of a riotous mob, actually demolished the establishment of the leading press of the city and wasted and plundered the private house of a prominent citizen, could not have occurred.

"We do not wish to return to a police which, if it did not sympathize with and make up a part of the mob, was at least utterly without efficiency to repress it.

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"No; let us have order and security to life and property and the pursuits of industry and peace—considerations above all partisanship and political ascendency. Let us have a police independent of the vicious and disorderly, who, in cities, make up a large voting class of controlling influence in elections. These are not attainable in our judgment, by giving to mayors, who are necessarily partisan officers, the appointment of heads of departments who will also necessarily be partisasn.

"Our present system is the growth of time, the demand of necessity; and until a better one is proposed than that which puts us back under an odious and inefficient system, we shall be pardoned for adhering to the present. And we think that the Legislature may be safely trusted to act either in the retention or abolition of the present system, as the wants of the people of cities may require.

"E Thompson Gale, President United National Bank; J. M. Warren & Co.; Wm. F. Sage, President Union National Bank; J. W. Freeman, Hiram Smith, P. M. Corbin, Cashier Union National Bank; John P. Albertson, President Mutual National Bank; J. B. Kellogg, Cashier Central National Bank; Jared S. Weed, President of the Troy Savings Bank; Fuller, Warren & Co., O. G. Clark, Willard Gay, Cashier National State Bank; Henry C. Lockwood, D. Thos. Vail, President Merchants and Mechanics' Bank; R. H. Thurman, Cashier First National Bank; Dusenbury & Anthony, Bennett & Fellows, Warren & Taylor, Wood, Willard & Prentice, Wells & Thayer, Graves, Van Alstyne & Co., Van Schoonhoven, Fisk & Converse, John L. Thompson, Sons & Co., S. C. Dermott & Co., Knowlson & Morgan, Hawley & Co., John A. Ferriss & Son, Saxtons & Thompson, Ingraham, Phillips & Co., Wm. Kemp, Sheldon & Greene, J. B. Carr & Co., Gilbert, Bush & Co., James Forsyth, C. F. Tabor, Geo. W. Eddy, M. D. Schoonmaker, H. G. Ludlow, Velsey & Cole, Kirk & Robertson, Stephen A. Mealy, Bisco & Ingalls, Weed, Haskel & Co., Jonas C. Heartt, Heartt & Co., J. H. Howe, Catlin, Lane & Co., F. A. Fales & Co., Lape, Brothers & Co., Daniels & Hitchins, Flagg, King & Co., G. V. S. Quackenbush & Co., Potter, Paris & Co., Morrison & Colwell, Wallace & Vaughn, Wager & Fales, Cox, Church & Co., Buswell, Durant & Co., Bussey & McLeod, J. O. Merriam, Winne, Ford & Clark, G. F. Sims, Cashier Troy City National Bank; James W. Cusack & Co., Van Zile, Anthony & Co., George Babcock, John A. Griswold & Co., C. L. Tracy, W. & L. E. Gurley, Charles Warner & Co., Collins & Callihan, Robert Green, G. I. Pratt, R. Cruikshank, Silliman & Co., C. M. Wellington, Cashier Manufacturers' National Bank; Rev. Peter Havermans, George Dauchy, Vice-President Troy City National Bank; H. Miller, President National Exchange Bank; S. Tappen, Cashier National Exchange Bank; Elias Plum, F. Sims, Cashier Merchants' and Mechanics' National Bank; G. M. Tibbits, Dudley Tibbits, G. Robertson, Jr., Rensselaer county judge; Geo. H. Cramer, John Hobart Warren, John E. Gale, W. A. Shepard, Vice-President United National bank; Moore & Nims, Starbuck Brothers, J. L. Van Schoonhoven, H. Burden & Sons."

I have, in addition, received individual letters from large numbers of the prominent citizens of Troy, and will read expressions from a few of them. Messrs. Saxtons & Thompson, largely engaged in the milling business, write:

"As owners of real estate (flouring mills and residences) in this city, we do most earnestly protest against any change of police or police regulations. Our desire for the maintenance of the present capital police is far above any political or personal likes or dislikes, and is founded on the great law of self-preservation. We believe the fair fame of Troy depends upon its continuance."

Jonathan W. Freeman, a lumber dealer and large property owner, writes:

"The capital police was organized as a matter of necessity. It has worked well, and law and order men of all parties support it. I would rather see all the good your Convention may propose voted down, than to have our only means of safety—the capital police—destroyed by your action."

Uri Gilbert, late mayor of Troy, and one of the most eminent of its citizens, says:

"No agency contributes so much to the safety of the lives and property of our citizens as the capital police. I do most earnestly request you, in behalf of your constituents, to persevere in opposing the article reported to the Convention by the chairman of the Committee on Cities, the adoption of which, as a part of the fundamental law would, I believe, prove most disastrous to the interests of this city."

E. F. Bullard, who has recently taken up his residence in Troy, says:

"I would not have moved into the city, or invested a dollar in real estate therein, if I had supposed that the police commission would be abolished, and the State withdraw its protection over the lives and property of those within cities."

R. H. McClellan, late surrogate of Rensselaer county, writes:

"The capital police has been approved by public sentiment, without distinction of party, and should be sustained."

Potter, Paris & Co., prominent stove manufacturers, say:

"We are decidedly opposed to any action that will make any change in our efficient capital police organization."

Harvey J. King, a prominent citizen and lawyer, refers to the inefficiency of the old police system which the present plan superseded, and says:

"Then, alike under the rule of either political party, we had an inefficient and unreliable police force, composed as it was of partisan appointees, whose continuance in place depended upon political chances. Now, it is quite different, and we have daily and constant evidence of the intelligent, faithful and efficient performance of the duties devolving upon the police organization. Our citizens feel a degree of security and confidence never realized under the old system. This marked and gratifying change is the result of placing the appointment in other hands than those of a mayor or aldermen whose popularity and chance of further political promotion must be looked to in the making of appointments."

George Gould, late justice of the supreme court of this district, and formerly mayor of Troy, writes as follows. I give his letter complete, as it presents the argument of the case in a concise and forcible manner:

"In regard to the proposed amendment, relating to the government of cities—I am surprised at its introduction; and I should be very much grieved to find it adopted. After thirty-seven years' residence in Troy, I feel myself fully qualified to speak of the government of the city and of its vicinity. And you need not hesitate

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to assure any and all members of the Convention, that this part of the State, never, at any time, had what deserved to be called a police force, until since the creation of our present commissioners. And there is not a shadow of doubt that nine-tenths (if not all) of our respectable citizens, without distinction of party, are more than satisfied with our present system, and would be very sorry to lose it. The legal idea in regard to laws is not to change them unless there is found an evil to be remedied. And now, while we have an organization which was adopted to remedy the intolerable evils of our former position—when no one thinks there is any evil of moment enough to call for a change—to be thrown out of a good condition merely to try an experiment is both an unheard-of innovation upon principle and an unwarrantable trifling with the good order, the well-being of a large and important portion of the people. The security of persons and property in all this thickly populated region is at stake in this proposition; and we are entitled to demand that no experiment be tried at our expense. We care nothing for fine theories; we ask for tried facts; and we know that we now are well taken care of. Therefore we insist that we are entitled to be let alone, unless, indeed, the Convention would do us and others the favor of giving its sanction to our commission. It was not this part of the Constitution which the people cared to have touched when they voted for a Convention. The principle involved does not require, and indeed hardly admits of suggesting a political point; but in justice to those who have conducted our present system I would add that it has not been managed as a partisan matter, and great fairness has been manifested in the selection of members of the force."

Rev. Peter Havermans, the well known and venerable pastor of St. Mary's church, whose parishioners number several thousands of adopted citizens and others, writes thus emphatically and earnestly:

"I beg leave to say that, from observation and knowledge, I am satisfied that the capital police system has subserved a most beneficent purpose in this city. It has given us good order and security where, under the municipal plan, crime was alarmingly frequent, and our community felt that there was safety for neither property nor persons. The capital police is superior and efficient in this: that it is independent of all the bad influences of the popular elections. The men do not feel that they are dependent on politics or partisans, but rather that they hold their offices upon the tenure of faithful service and good behavior. So I have seen, in common with our citizens generally, that they have done their duty with fidelity; they have protected us from crime and furnished us a safeguard for our rights and property that otherwise we should not have enjoyed. I feel deeply on this subject, and should regard it as a great calamity if we were forced back to the old order of municipal police, either by the action of the Constitutional Convention or the Legislature. I entreat you, as I do the members of the Convention generally, to vote and use your influence against any and all propositions that contemplate any change of our existing capital police system."

Ingraham, Phillips & Co., proprietors of the Washington stove works, say:

"We regard the present police system as efficient and economical—a necessity in fact for a city largely engaged in manufacturing like ours. We have safety now, while formerly there was constant danger and frequent crime."

P. H. Baerman writes:

"I would regard the abolition of the existing police system a public calamity."

Alfonzo Bills, a leading miller and flour merchant—one of the most prominent business men of Troy—writes:

"You know I meddle very little with politics, and as a general rule I consider my duty discharged to my country when I go to the polls and vote against the radicals; but I was not able to do even that satisfactorily until our present police system was adopted—a system I should be very sorry to see disturbed, as I consider the practical working of it in our city a great success. I don't think it can be bettered. I certainly think the proposed one man power for three years very objectionable, and I do hope your Convention will not put it in that shape should they decide to touch it at all, the expediency of which I very much doubt. I think the maxim to 'let well enough alone' a good one."

Alexander McCall, one who has had much to do with city affairs, and a large owner of real estate, says:

"I am decidedly in favor of the present police system of our city, and should deem it a calamity to return to the old system of watchmen, or the old or a similar mode of appointing them."

Elias Plum, once mayor of Troy, and widely known as a capitalist and business man, writes:

"I much prefer our police system as it now is, and know of no change that can be made for the better. We never enjoyed as much security as we now have. I feel it would be a calamity to have it all thrown back into the political cauldron again, and subject to be changed at every election of mayor, and to be held out as an inducement for such change."

C. B. Russell, a banker and intelligent citizen, says:

"We now have an efficient and well conducted police force, and one which does great good Better not change it."

Giles B. Kellogg, an old citizen and able lawyer, referring to the article reported to this Convention by the chairman of the Committee on Cities, says:

"I am amazed that a system of such concentrated and intense despotism should have been recommended. The effect of the plan, I have no doubt, would be to depreciate property in our cities at least fifty per cent, and our experience shows that peaceable citizens would have to remove from our cities, or else remain in constant danger of losing their lives."

G. V. S. Quackenbush & Co., among the heaviest dry goods dealers in the State, write:

"As you know, we have suffered too much by burglaries under the old system to willingly return to its insecure protection. We feel satisfied with the police as it now is, regarding it efficient, and, for the service rendered, economi-

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cal. The Convention may be sure it works better than it would to be mixed up with local politics."

Wallace & Vaughn, wholesale druggists, write as follows:

"We refer with just pride to the record of our capital police, and insist that we cannot spare these guardians of our lives and property. We urge you to resist with all your powers the proposition to return to those evil times when peaceable citizens hardly dared to walk the streets after nightfall, and lawlessness and crime everywhere abounded."

J. M. Warren, a citizen of high character and great prominence, an ex-mayor of the city of Troy, expresses his views in the following strong language:

"My opinion is, that the capital police system works most admirably, promptly and efficiently. It does much to prevent crime and is a great security to property and person; and until our present system was inaugurated our city had no reliable police. I think our citizens generally greatly value the institution as it is. The wit of man may invent something better, but is more likely to fail in the attempt. Pray let well enough alone."

Ex-alderman Charles Eddy, who for years held responsible positions in connection with the government of this city, says:

"I cannot contemplate the proposition for the abolition of the police commission with any other than feelings of real alarm. Its usefulness and necessity have been demonstrated. In behalf of myself, and I think of all other order loving citizens, I do most solemnly protest against the change recommended by the chairman of the Committee on Cities."

Joseph Fales, who has also had a large experience in connection with city government, says:

"We have now in this city a reliable police, and I hope the day is far distant when we shall be remanded back to the old plan managed in the interests of local politicians."

J. C. Osgood, for two terms a member of Assembly from Troy, a heavy tax payer and a representative democrat, speaks thus plainly and forcibly:

"You know that I am an old-fashioned man, and believe that when a thing is well enough it is better to let it alone. When the law was passed establishing a police commission for New York city, I felt that it was an outrage on the citizens of that city, because I believed it was done to take the power out of the voters' hands and to perpetuate the rule of the republican party in this State—which was wrong; but the law worked well for the peace of the city, and the same law has worked admirably in this city. Our citizens have become used to the present police system, and I believe are perfectly satisfied with it. My opinion is, that if the old plan were restored, or power given directly to the mayors of cities to appoint the police, the rowdy element would control, as that element would nominate and elect men to such office as would give to this bad class the naming of the police and then they would have full swing for mischief. Therefore, I say, leave well enough alone."

E. Waters, a prominent business man of Troy, says:

"I cannot believe that intelligent and well disposed delegates will sanction the proposition to destroy the police commission. It is absolutely necessary to our safety in cities, and I pray you to do all in your power to preserve the system."

Irving Brown, a lawyer of marked ability, and a citizen of excellent judgment, writes as follows:

"We have now as good a police as can be found in this country. Human life and private property are no longer subject to such raids as disgraced our city in the summer of 1863, when our jail was broken open, thieves and murderers were set at large, and houses and places of business were sacked and destroyed. If a vote of our citizens could be taken to-day on this subject, no doubt it would be largely in favor of retaining this system."

Willard Gay, Cashier of the National State Bank of Troy, says:

"All the law-abiding people, without respect to party, are well pleased with the present system of police, and would feel alarmed if it were done away with, by going back to the corrupt municipal plan of appointment. As far as this bank is concerned, we willingly pay our part of the tax necessary to sustain the system, and would pay more rather than return to the old one. Pray use your best endeavors to save us from such a plan as that proposed by the chairman of the Committee on Cities."

Charles H. Jones, proprietor of the Troy House, thus speaks of the capital police:

"I should very much regret to see this important arm of our protection abolished, and this I believe to be the sentiment of a large majority of the intelligent and respectable portion of the citizens of Troy, irrespective of party, as they have seen the workings of the old system under which their peace, property and personal safety were at the mercy of thieves, incendiaries, and even murderers."

G. W. Cornell, late sheriff of Rensselaer county, writes as follows:

"I regard the present police system of vital importance to our citizens, and the only one that has ever given us security in our persons or property."

J. Thomas Davis, clerk of Rensselaer county, says:

"The present police system met with some opposition when it was first put in operation, but I believe all good, orderly and respectable citizens now not only concede its excellence and efficiency, but present it as a model in protecting the personal rights and securing good order and the peace of the community. I do most earnestly urge you to oppose with the utmost of your ability the proposition to abolish the system."

William H. Young, a reputable merchant and a large tax payer, who has been for many years a member of the board of education of the city, writes as follows:

"As a tax payer. I feel that the money ex-

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pended in the support of our police system is more than trebled in the saving of property from fires alone, as can be proven by the number of fires that have been discovered and extinguished by the police force. For one, I would rather submit to a double tax than that the present police system should be abolished."

Winnie, Ford & Clark, dry goods merchants, write:

"Any change involving the abolition of our present excellent police system, and calculated to return our city to the danger and misrule of the past, would be very undesirable."

J. H. Willard, principal of the Troy Female Seminary, expresses his views as follows:

"It seems to me that the breaking up of our present police arrangement, and a return to the old system, would be most unfortunate for the good order of our city, and something that I think ought to be opposed most vigorously."

D. Thomas Vail, president of the Merchants' and Mechanics' Bank, of Troy, a large property owner, and most influential citizen, writes as follows:

"I was a witness of the efficiency of the metropolitan police in fighting down the mob in New York city, in 1863. The very next day I saw the mob in our city, unopposed by any police power whatever. I am sure it could never have occurred, had we enjoyed the protection of our present police force. We now enjoy a sense of security never before realized, and which no municipal system could secure us. I should deeply regret any change."

John B. Gale, a lawyer of distinction, and a large property owner, writes:

"If police authority were vested in the mayor I should regard it as fatal, and as involving a speedy return to the former state, when police was a mere fiction."

Wood, Willard & Prentice, wholesale boot and shoe manufacturers, write as follows:

"The business community, and indeed all law-abiding citizens, are more than satisfied with our police system as it now exists. There is no tax which we more willingly pay than that which goes for the support of this commission. Reposing the power of the appointment of the heads of departments, including the police, in the hands of a mayor, even if a good man, it seems to us would be despotic; and we cannot estimate its evils in the hands of a bad man. We sincerely hope we may be saved from such a fate."

Jared S. Weed, who has occupied many responsible positions in connection with city government, is a large owner of real estate and president of the Troy Savings Bank, says:

"I should regard the abolition of the capital police as a great injury to our city, an event that would be deeply deplored by nearly all our law-abiding population."

Ex-alderman Hugh Rankin, a large tax payer and sound business man, holds the following language:

"I am decidedly opposed to the 'one-man power' system for the government of cities recommended in the article submitted to the Constitutional Convention by Mr. Harris. It is contrary to the spirit and genius of our people. It may do for Russia or France, but it never will take with American citizens. It is dangerous in the extreme. The capital police is one of the finest improvements that could be devised, and ought not to be interfered with. It gives us order and security where before crime prevailed and danger menaced us at all times."

Starbuck Brothers, the well known manufacturers, write as follows:

"We should regard with alarm a return to the old municipal police system, by which policemen would be appointed by those just elected to political offices, and who would of course reward those who worked hardest to give them positions. Troy has suffered under the evils of this method of appointment, and we hope it may never again be thus afflicted. Now, our policemen are appointed because they are good and true men, and we feel safe under their guardianship."

COHOES.

A. S. Baker, proprietor and editor of the Cohoes *Cataract*, writes:

"I think the capital police commission absolutely essential to the proper government of such a community as is embraced within the district, and I trust that the good sense of the majority of the Convention will sustain the principle upon which it is established."

J. H. Masten, long a resident of Cohoes, and perfectly familiar with the interests of the place, writes as follows:

"I believe that a very large proportion of our citizens, irrespective of party, are favorable to a continuance of a commission that has contributed so much to the security of property and the peace and good order of society."

LANSINGBURGH.

Albert E. Powers, a large tax payer, and one of the most useful and influential citizens of Lansingburgh, says:

"No tax is paid so freely as that for the support of the capital police, the usual comment being that there is pleasure in paying it, for we realize the worth of the money paid. It has maintained good order and saved us from crime. I truly believe that the whole cost of the force to this village has been covered by the difference to citizens in the prevention of fires alone. I have no doubt that the representatives of three-fourths, if not of nine-tenths, of the taxable property in this village, desire the continuance of the police under its present government. The fact that the officers and men are in no way amenable to the offenders against the laws, adds constant efficiency to their action and discourages resistance to their authority."

D. H. Flack expresses his earnest opposition to the plan proposed by the chairman of the Committee on Cities, and his support of the capital police as essential to the protection of the community.

Alexander Walsh, cashier of the National Bank of Lansingburgh, writes with equal earnestness in favor of the police commission.

Horace W. Day says:

"Our tax payers in this village are almost unanimously in favor of the capital police."

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Joseph Fox writes that in his opinion the abolition of the capital police would "prove disastrous in its influence upon the peace of society."

WEST TROY.

M. R. Peak writes as follows:

"The police as now organized is satisfactory to the public, is free from the bad influences of party control, and is most efficient in service. A change of the system I believe would prove disastrous—especially such a change as that proposed in the Constitutional Convention by Mr. Harris. I trust it will be defeated."

James D. Lobdell, of West Troy, speaks of the insecurity and danger that prevailed before the present police organization was put in operation—that "there was no adequate protection against raids of vicious and evil disposed persons who came from the river and canal, and from the adjacent cities; but since the introduction of the present police, night brawls seldom occur, burglary and arson have been less frequent, and a state of security has been felt by our citizens such as we had not enjoyed for many years previous."

Thomas Richardson writes that "under the old system no protection was afforded; under the plan reported by the chairman of the Committee on Cities we should certainly have no protection. Under the present capital police commission safety and good order are guaranteed us. We beg that your Convention will do nothing to put us back to the tender mercies of the dangerous classes."

COMPARATIVE EXPENSE OF OLD AND PRESENT POLICE.

In this connection, I have before me a statement derived from official sources, showing that the expense of supporting the capital police in Troy—an organization that affords reliable protection to our citizens—exceeds what would now be the cost of the old system of utterly inefficient and worthless municipal police which it superseded only $3,658.91. And it is believed that in discovering and extinguishing fires alone, as stated by Mr. Young, the capital police has saved property of larger value than the amount which our police cost the city during the year—$65,181.85. I present the statement complete, as follows:

The actual amount of money charged to the city of Troy for expenses of the capital police for the year ending September 30th, 1867, was,	$65,181 85

This sum paid for 1 superintendent, 3 captains, 12 sergeants and 60 patrolmen, or a force of 76 men, and includes all charges for salaries of commissioners and clerks, for office rent, light, fuel, etc., etc.

The average amount paid by the city for the services of these 76 officers for the year was, therefore, each,	$857 65
And estimating the inhabitants of the city at 45,000, each inhabitant paid for the support of the police system not quite,	1 45

The expenses of the old police system, for the year 1864, were as follows:

Amount paid night watchmen,	$19,578 19
Amount paid directly by the city of Troy to constables for the service of criminal process,	13,523 04
The amount paid by the county of Rensselaer to constables, for the service of criminal process, in that part of the county now embraced in the capital police district (including the amount paid for attendance at courts), was $15,819. Of this the city of Troy paid 52 3-10 per cent. or,	$8,273 34
Under this old system, nearly all the persons arrested were taken directly to the jail, and there detained until taken to court for examination—an expense being thus incurred for two or three days board of each person arrested, as also an expense for a *mittimus* in each case. The expenses for board and for these writs averaged, yearly, about,	6,000 00
The actual cost, therefore, of the old police system for the year 1864 (while a large part of this cost was indirect, and, at first glance, covered up) was,	47,374 57
But in case the old system had continued to the present time, the pay of night watchmen must certainly have advanced considerably, with the general advance (of about 100 per cent) in the pay of persons in all vocations. But estimating the advance of the cost of these night watchmen at only 50 per cent, it would be necessary to add to the actual amount given above,	9,789 09
In addition to this, the bills of constables for criminal service were annually increasing, and any estimate that could now fairly be made would call for an addition of at least 20 per cent to the amount paid, in 1864. But an addition of 20 per cent would be,	4,359 23
It thus appears that the cost of the old police system, if that system had been in existence in 1867, would have been,	61,522 91
The difference between the cost of the capital police system for 1867 and that of the old force (if it were now in existence), appears as,	3,658 91
Or 8 1-10 cents for each inhabitant.	

But the foregoing estimate of the increase of pay of night watchmen is exceedingly small, and it will readily be seen that if this estimate were increased in proportion to the actual increase of the cost of living, the old force would cost more than the existing system. The towns in the county of Rensselaer, which are outside of the capital police district, as well as those in it, reap a large and peculiar benefit from the existence of the present system, as will be seen on inspection of the following data:

In 1864, the county paid for the service of criminal process and court service in the capital police district,	$15,819 00
Of this amount the city of Troy paid 52 3-10 per cent, or,	8,273 34
And the towns consequently paid,	7,545 66
In 1867, the county paid for the same service performed in the district, (as per bill presented by the board of capital police to the supervisors of Rensselaer county, 52 3-10 per cent of this amount, which must be paid by the city, is,	2,314 67
	1,210 74
The county towns must therefore pay in 1867,	1,103 93
Instead of (as in 1864),	7,545 66

The police force, under the old system, consisted of seventy-eight men, twenty-six of whom were on duty each third night alternately, no duty whatever being performed during the day. It would be very difficult, if not impossible, to prepare an estimate of the duties performed by this force, from any preserved records. The capital police force of the city of Troy consists of seventy-six men, as above stated, who are required, by the capital police act, to give their entire attention to police duty, serving both night

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and day. The last annual report of the deputy superintendent shows the following as some of the principal duties of the force during the year ending September 30, 1867:

Arrests made during the year,*	4,316
Destitute persons provided with lodging,	1,912
Lost children restored to their parents,	101
Fires attended, to preserve order and secure property,	51
Fires discovered by policemen,	6
Fires extinguished in their inception by policemen,	6
Persons preserved from death by fire,	1
Stores, dwellings, etc., found open at night and secured,	403

It is proper to state that during the year 1867, the pay of capital police officers was increased by act of the Legislature. During the first six months of the fiscal year, the expenses of the force, as given above, were in accordance with the pay of patrolmen at $725 each, per annum; and, during the last six months of the fiscal year, these expenses were in accordance with the advance of pay to $850 per annum. It may also be proper to state that the $65,181.85 (the entire amount of the running expenses of the system for the fiscal year ending September 30, 1867), does not include the interest on the amount which the city holds, invested in station-houses. In comparison with such investment under the old police system, the city pays, in effect, $1,750 (or seven per cent on $25,000) more than in 1864.

THE CONTRAST.

I believe I utter the almost unanimous opinion of the law and order people of Troy, without respect to party, and of a large proportion of those in the other places in the district, when I say that the abolition of our admirable and efficient police system would be regarded as an unmixed and terrible calamity. It would remit us and all our interests of property and life to the insecurity, the constant peril and the criminal depredations of the past, when crime was rampant in the city and there was but little power to check or punish it. The plan to give the mayor all powor, clothing him with authority to appoint police commissioners and remove them at pleasure, is a plan for local despotism; a plan to enable that official during his three years' term to organize and operate a political machine that shall ride rough-shod over the interests of the people and to build up a partisan power for self-promotion or to advance the sinister purposes of faction, that would become tyrannous in itself and defiant of the rights of the people. It is a plan to consign the cities of New York and Brooklyn, and the cities and villages of our police district, to the perdition from which they were rescued by the existing police organizations. Better, a thousand times better, that the Constitutional Convention should at once disperse than that it should incorporate in the fundamental law a feature so sure to undermine all the safeguards of protection, threatening us with the old carnival of crime and striking a severe if not fatal blow at our prosperity. Nor would a change of the system so as to secure the appointment of the police commissioners by the common council, or their election by the people, prove much if any better, as experience has abundantly demonstrated. King caucus in this case would prove quite as dangerous as king mayor in the other. Local partisan influence would dictate the police appointments, and the dangerous classes who have votes would have a voice in the selection. We must, to insure protection, have a police entirely independent of municipal politics, and this is insured under the State commissions of the metropolitan, capital and frontier police organizations. In this connection I wish to state that in the last interview I had with our late colleague, the lamented David L. Seymour, he declared to me distinctly and with earnest emphasis that he should oppose with all his power any proposed action by this Convention for the abolition of our capital police system; that although he did all he could to defeat the enactment of the law authorizing the organization and spoke earnestly and labored zealously before the Senate committee for that purpose, believing the principle to be anti-republican and wrong, yet now he was perfectly convinced of the necessity of the organization for such cities as ours. And if he were alive and here to-day, party or no party, he would raise his voice in earnest protest against abolishing the system of police absolutely essential to the protection of our city and the safety of its citizens.

THE FRONTIER POLICE.

The frontier police, now in operation in Buffalo and adjacent places, was organized May 6, 1866. By an act passed in April, 1867, the police commissioners were constituted a board of excise. The amount received for licenses was $38,870, of which $37,710 was contributed to the police fund, and $1,160 to the poor fund. The receipts from fines imposed by police justices during the year, amounted to $28,637.51; while the average from the same source for eight previous years under the municipal police, was $3,522.44. This one fact shows the great superiority of the existing police system in arresting criminals and bringing them to punishment. I have before me a table showing the annual cost per capita of the members of the police department of Buffalo, from 1861 to 1867, inclusive, by which it appears that the cost for each in 1865, under the old system, was $724.80; in 1866, under the commission, $542.31, and in 1867, $650. I append the official facts relating to the frontier police organization, as follows.

Chapter 484, Laws of 1866, provides for the organization of the Niagara frontier police district, viz.: Three commissioners, one clerk, one superintendent, one surgeon, two justices to the police, six captains, one hundred and forty patrolmen, twelve doormen. Total, one hundred and sixty-six.

Date of organization, May 6, 1866.

By act passed April 1, 1867, the police commissioners were constituted a board of excise.

Number of licenses granted,	1,246
Amount received for licenses,	$38,870

* The arrests for the higher crimes, the expense of which is directly paid by the county, are of course included in this number; and all police expenses connected with them, which belong to the city of Troy are included in the $65,181.85, charged to the city for police expenses during the year 1867. The bill referred to above, as presented to the board of supervisors, is collected of the county simply that the amount may be divided among the localities of the capital police district, according to the work done by their several officers.

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Contributed to police fund,	$37,710
" " poor fund,	1,160
Receipts from fines imposed by police justices during year ending October 31, 1867,	$28,637 5
Average yearly receipts from same source for eight previous years,	3 522 44

Table showing annual taxable cost per capita of the members of the police department from 1861 to 1867, inclusive:

YEARS.	Number officers and men.	Expenditures less fines and resources.	Salaries of policemen.	Average cost per man.
1861,	66	$25,518 00	$400	$386 63
1862,	66	26,779 29	400	405 74
1863,	66	34,333 15	400	520 19
1864,	81	51,483 17	500	635 19
1865,	81	59,114 19	700	729 80
1866,	138*	74,881 29	700	542 31
1867,	166†	107,900 00	900	650 00

*Force increased May 7, 1866.
†Force increased April, 1867.
Fees of officers extra, and services of sheriffs and constables for attendance upon the courts, not included in period prior to organization of the frontier police.

YEARS.	Number of arrests.	Number of lodgers.	Fines received.
1858,	3,175	1,632	$2,508 50
1859,	2,687	1,343	2,389 75
1860,	2,699	1,161	2,140 2.
1861,	2,656	1,055	4 332 00
1862,	3,040	1,270	3,368 00
1863,	2,368	875	2,300 00
1864,	3,000	897	5,068 00
1865,	3,244	1,555	5,965 00
1866, Jan. 1 to May 6,	752	944	931 00
1866, May 7 to Dec. 31,	7,412	1,891	20,972 46

I have a large number of letters from leading citizens and property owners of Buffalo, all but two or three of which speak in terms of unqualified commendation of the frontier police. From these I beg leave to quote a few brief expressions:

P. W. Wagner writes that "financially and morally the community cannot afford to dispense with the present system."

Pratt & Co., extensive hardware dealers, "think that a change to the old system would be a great detriment to the city."

The Buffalo *Commercial Advertiser* declares "the present a more efficient police than we have hitherto enjoyed, and we should deem it a great misfortune to return to the old system." It may be added that the *Advertiser* was originally opposed to the passage of the act.

Richard Bullymore "is satisfied that the present organization is doing a good work and would be very sorry to have it broken up."

Silas Kingsley "looks upon the present system in principle, organization and practical working as a grand success."

John Wilkeson "heartily approves the present commission, that it works well, and deems its continuance absolutely necessary to the good government of the city."

N. P. Sprague "would deeply regret a return to the old system of appointment by the mayor," and says that "the present force are a fine body of men and a change now would be deplorable."

D. Ramson & Co. says "it will be a gala day for all vagabonds when a return to the old system is made and that the present force has the approval of all good citizens."

R. Dunbar says "that the frontier police have worked well and are altogether the most efficient agency for the preservation of the public peace we ever had in the city of Buffalo."

L. & D. J. White "think that candid men will unite to continue the present system in preference to giving the selection of the police force to political demagogues."

Jno. S. Losdrick "had some doubts about the working of the system at first, but is now fully convinced that a return to the old system would be fatal."

E. D. Holman "is decidedly in favor of the present system and opposed to all change."

Joseph Churchyard "would deeply regret the destruction of the present commission."

Thomas Blossom says that "all men who are not controlled by party feeling will bear testimony to the high character and efficiency of the present police."

David S. Bennett, that "the continuance of the present force is absolutely necessary for the security of life and property."

Harvey & Wallace "would regard a return to the old system a great public calamity."

Howard & Chappel "prefer the present system to any thing we ever had."

Carley & Co. "would deprecate a change to the old system as loaded with danger to the interests of the city."

A. L. Griffin: "The abolishment of the present force would be of great detriment to this city, and the loss would be felt by every lover of good order."

Scatherd & Belton: "Our observation is greatly in favor of the present plan."

Nine members of the common council, with the president of the council, city attorney, treasurer, surveyor, clerk and street commissioner, state that "the system has the confidence and approval of all good citizens, who heartily and earnestly protest against its abolition."

Cassel, Rathbone & Co. "are unwilling to see the present commission disturbed."

Dr. C. W. Harvey: "It is the best system ever in force in our city."

W W. Peabody trusts "the force will not be abolished."

Henry W. Box: "The opposition to the system is entirely partisan, and although in the first instance I was opposed to the passage of the act, should now deeply regret its repeal."

J. D. White "implores the Convention not to abolish this valuable organization."

Lapp & Adriance "are in favor of the present and opposed to any political police organization."

Shaw & Kibbie "would much regret to have the commission abolished."

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Cutler & Scroggs "are in favor of the retention of the present organization and opposed to giving the appointment of the police force to the mayor."

Adrian R. Root "regards the present as a most efficient organization, and would greatly regret a return to the former system."

P. A. Balcom & Son: "We are well satisfied with the present police force, and the city cannot well afford to do without it."

Seymour & Wells: "It would be a great disappointment to the people of Buffalo to have the present organization changed."

Dr. Thomas S. Rochester: "In common with all good citizens, I should be very sorry to have the present force disbanded."

D. P. Dobbins "hopes the present force will be retained, at least while he lives in Buffalo."

Sears & Daw: "Should not like any change."

J. C. Barnes & Co.: "Would regret exceedingly the transfer of appointments to the mayor."

P. J. Lewis: "The abolition of the commission would be a damage to good order and seriously endanger the security of life and property."

Rounds & Wall "think there is no comparison between the present and the old system. Public order is without protection if a change is made."

Thomas, Howard & Johnson: "We are in favor of retaining the commission."

G. Cande: "The present organization gives full satisfaction, and the people desire no change."

A. M. Clapp: "The police force now existing has given the city of Buffalo safety and peace."

Sage, Sons & Co: "The business men of Buffalo are totally opposed to the abolition of the present system."

Geo. R. Yau: "Beside the present the old force sinks into insignificance."

Farnham & Allen: "The present organization is efficient and conducive to the public good."

Pickering & Otto: "To take a step backward now would be a great public misfortune. We have a reliable body of men, and need no change."

Simmons & Crissey: "All order loving and law abiding citizens may well look with fear and trembling at the proposition for returning to the old plan of appointment."

E. Madden: "The present system is superior to any thing we ever had, and a change would be a great calamity."

L. R. Avery: "Judging only from results I am in favor of the organization."

Jason Parker: "I cannot too heartily express my preference for the present system."

We might multiply the above list, but enough has been said to demonstrate the deep feeling that exists in Buffalo on the subject, where the system has been tried with such good results.

STATE AUTHORITY, FREE CITIES, ETC.

So much I have presented—not my own opinions merely, but also the deliberate convictions and calm reasoning of many substantial and, I may say, representative citizens of the localities directly interested—in favor of maintaining the police organizations that derive their authority directly from the State, and are independent of partisan municipal influence and control. I need add no more to the argument. I cannot believe this Convention will give its approval to any plan that contemplates the abolishment of a system which is required as a safeguard against crime, and which is absolutely essential to the preservation of order and the enforcement of the laws. The cities to which we are often referred as being the defense and stronghold of liberty in the middle ages, were engaged in a continued warfare against the feudal system. The contest was between them and an aristocracy. At first the cities were more or less democratic in their forms of government, but they all became in the end oligarchies. In order to prevail against the feudal barons they allied themselves with the kings. Many of them obtained from the kings charters granting special and valuable privileges, but they have all, especially in France, England, Italy, Holland and Spain, been subjected to the national power. All the cities of England are subject to the omnipotence of parliament. In France the central power has for two hundred years controlled all municipal government. It is the same in Spain. In Italy, where for three or four centuries—from the year 1200 say to 1600—many cities flourished with great fame and power, all have finally succumbed to the national power. We can learn from history that very few of them ever had democratic governments. The most famous and powerful of them, Venice, Genoa, Florence, were oligarchies, in which popular rights and personal liberty were less regarded, and more limited, than under monarchies. For instance, in Venice, whose territory contained a population of several millions, not more than three or four thousand were admitted to any share in the government. In Florence, Sienna, and Lucca, altogether, not more than five or six thousand. In all Italy, in the fifteenth century, out of a population of fifteen millions, not more than eighteen thousand had any part in government, while in the fourteenth century eighty thousand had, and in the thirteenth one million eight hundred thousand. From this decay and downfall of the power and liberty of cities, we may learn that cities are not, at least, the only nor the safest depositories of power, defenders of popular rights, and protectors of personal liberty. The so-called free cities of Germany are any thing but free in fact, so far as recognizing the rights of the people are concerned. They enforce the most despotic rules for the government of trade, and apply the most arbitrary laws in all the details of industrial occupations and the affairs of commerce. The only cities in Europe that have retained their independence down to the present century are Bremen, Hamburg, Lubec and Frankfort. They are called republics. But the government never was popular, nor democratic. The government of Lubec is vested in the Senate and House of Burgesses. The former consists of four burgomasters, holding office for life, two syndics and sixteen counselors; and the latter of twelve colleges or companies, only seven of which have the privilege of voting. The House of Burgesses has the initiative in all deliberations relative to the

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public expenditure, foreign treaties, etc.; the Senate is interested chiefly with the executive duties, but its sanction is necessary to the passage of new laws. The government of Frankfort is vested in a Senate, a permanent Chamber of Citizens, and a Legislative Chamber. The Senate, which exercises the executive power, consists of forty-two members, divided into three ranks or branches, namely: sheriffs, junior senators, and State counselors. It annually chooses two presidents, from the first and second ranks. The permanent Chamber is an assembly of fifty-one members, chosen from among citizens of all ranks, and of whom at least six must be lawyers. The Legislative Chamber is composed of twenty senators, twenty members of the permanent Chamber, forty-five members chosen annually by the electoral college of Frankfort, and nine deputies from the rural districts. Citizenship is a personal distinction not obtained by birth alone. Neither domestic servants nor foreigners enjoy the rights of citizens, and foreigners have to pay for permission to exercise any calling in the city. Such was the government of Frankfort. The city has passed under the rule of Prussia, and what change of city government has been made is unknown to me. The executive government of Bremen is vested in a Senate, consisting of four burgomasters, two syndics, and twenty-four counselors; but the principal legislative authority is in the hands of the assembly of burgesses, composed of all resident citizens that pay a certain amount of taxes, without regard to their religion. The Senate chooses Senators for life, from a list of candidates proposed by the burgesses. The government of Hamburg consists of a Senate and three colleges of citizens. The Senate is composed of four burgomasters and twenty-four Senators, with the addition of four syndics and four secretaries; three of the burgomasters and eleven of the counselors must be lawyers; the remainder are merchants. The qualification for becoming a Senator is, that the individual be born in Hamburg, be about thirty years of age, and a member of the Lutheran church; no Calvinist or Catholic being permitted to sit at this board. The citizens of Hamburg are divided into "great" and "small." The former alone are eligible to places of rank and honor, and can buy and sell without restriction. The latter can neither import nor export goods wholesale in their own names, nor transact business on the exchange. The affair is altogether a matter of money, the expense of becoming a grosse burgher being one hundred and fifty marks, and that of a kleine, forty marks. The right of citizenship is not hereditary, nor can any foreigner transact business in Hamburg without becoming a citizen, nor carry on any kind of manufacture or handicraft, without entering one or other of the guilds or corporations, of which twenty-three exist Jews are wholly debarred from the last mentioned privileges. If great cities are not, as Thomas Jefferson said—undoubtedly applying the remark in a political sense—"eye-sores upon the body politic," they cannot be regarded, either in the light of history or from the experience of our own day, as the defenders and promoters of well regulated liberty.

PLANS OF CITY GOVERNMENT.

As to plans for city government, my own judgment is, after having given the subject much earnest attention, that no uniform system is practicable for that purpose. The interests of different cities are not at all in common as respects methods of municipal administration. We see in the article before us that much of its polixity of detail comes from the enumeration of powers and duties applicable to New York and Brooklyn as distinct from those which are named for other cities of the State. And yet, Albany may desire provisions which would be unacceptable to Troy, and so of other cities. No two cities are alike; interests and views of municipal policy largely differ. Each has derived its municipal authority from the State, and as any one of them desires to change its policy of administration, the way should be left open for the accomplishmant of the object by legislative action. We cannot, with propriety or justice, bind down the cities of the State to a particular and detailed plan of government, by permanent constitutional enactment. I would, therefore, go not one step further in the way of action here, with reference to the government of cities, than to adopt substantially the language of the Constitution of 1846, as applicable to cities. It may be found in the eighth article of that Constitution, section 9, in these words:

"It shall be the duty of the Legislature to provide for the organization of cities, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such municipal corporation."

Also article 6, section 18:

"All judicial officers of cities, and all such judicial officers as may be created therein by law, shall be elected at such times and in such manner as the Legislature may direct."

And article 10, section 2:

"* * * * All city officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, or of some division thereof, or appointed by such authorities thereof as the Legislature shall designate for that purpose. All other officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people or appointed as the Legislature may direct."

At the proper time I shall propose to substitute these sections for the article reported by the Committee on Cities, satisfied that, doing so much, this Convention will have fully discharged its duty in this whole matter.

Mr. M. I. TOWNSEND—Perhaps in the order of discussion, it might have been more appropriate in some respects to have allowed a resident of some other portion of the State to have carried forward the debate, rather than to have continued it at the present time from the residents of the capital police district; but inasmuch as the interests and history of affairs in this district have occupied the attention of the committee to some degree during the forenoon, it may, perhaps, not be inappropriate that I should continue the discussion at the present time, with

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especial reference to the state of things here at the center of the State. Perhaps it is not improper for me to avow here, that I have had much to do with the procuring from the Legislature the enactment of that police law under which the city of Albany, the village of Greenbush, the town of Watervliet, including West Troy and Cohoes, the village of Lansingburgh and the city of Troy, are now governed, so far as police is concerned. A state of things had existed in that district just previous to the enactment of that law, such as could not be endured by the people, who were accustomed to civilized life and the protection of civil law. Some of us had read something upon the subject of law, and those of us who had read, had learned this fundamental principle, that allegiance and protection were correlative duties; that where one owes allegiance to another, whether that other be a State or individual sovereign, the correlative duty of protection arises. Such has been the history of law for the last thousand years in the civilized world. Knowing and believing that these duties were correlative, we felt it necessary to come to the State to which we owed and practiced allegiance, and ask protection from the State for our persons, for our families, and for our property. In this district we were voters under the law, and made so by the Constitution of 1846, and confirmed in our rights as voters by the Legislature. We found throughout this district that a portion of the voters were, to a great degree, deprived of the privilege of voting; that this denial of the right occurred in the city of Albany, that it occurred in the city of Troy, and that it occurred in the villages constituting this district; and we came to the Legislature, and, among other things, asked that a law might be created under which we might have the power of exercising the right of suffrage. And the reason why I came, sir, was from my peculiar situation. I lived in a ward having from ten to eleven hundred voters. There were in that ward about two hundred and fifty voters who wished to vote upon the same side with myself. The whole of the remainder of the voters voted upon the other side. The law guaranteed to us the right of challenging a man who came to the polls to vote, in regard to whose right to vote we had doubts in our minds. In 1860, in 1862, and 1864, no man wishing to vote as I voted, was allowed to stand for one moment within thirty feet of the polls after he had cast his vote. Men voted all day there without it being possible to challenge their votes, or to know who was voting; aye, without knowing what name a man who presented himself to vote chose to call himself by.

Mr. E. BROOKS—I would ask the gentleman whether the party represented by the gentleman [Mr. M. I. Townsend] had not a representative among the inspectors of election?

Mr. M. I. TOWNSEND—They had not. Our democratic friends in that ward were too cunning to allow the minority in politics to have an inspector of election, because they run always two tickets for that purpose, and the democrats possessing a great deal more than two-thirds of all the voters in that ward, the minority have never within the last ten years, at any time, been able to elect an inspector of election. Thus the work went on, a farce upon the exercise of the right of suffrage. In 1864 this state of things culminated in the introduction from the city of New York of some thirty "roughs," who went from one poll in the city to another, and as we had five of the polls of the city (just one half of the whole) controlled as that in the eighth ward was, these roughs voted as many times as they pleased, and under just as many names as they chose to use. I am speaking of facts; and to-day the marks of the bludgeons of those "roughs" are upon the heads of our citizens, and will remain as long as these citizens remain upon the face of the earth. In 1860 the violence was so great in that ward that we went to our supervisors and asked them to throw out the votes of that ward on that occasion, for at that time there were less than a thousand voters in the ward, and yet there were cast over fourteen hundred votes, exceeding the entire number of voters of all sorts in the ward by over three hundred. But it was not believed by the supervisors that they had the power of interference, and of course the evil was unredressed. In 1862 we had a renewal of these scenes much worse than they had ever occurred before. On that occasion a riot occurred in that ward, and the result was that instead of the vote overrunning it fell short. The political majority of that ward failed to cast their vote by about one hundred, because there were feeble and quiet men of the political majority who dared not come to the polls. The Rev. Father Havermans, among others, presented himself to vote, approached the polls, but left at once, fearing the consequences of appearing there on that day. Sir, on that occasion we had the old police. To so great a height did this riot run, that the mayor of the city himself came to the polls and took his place in an upper room of the grocery where the polls were held and looked out upon the voters; and when he winked with one eye a voter came up and voted, and when he winked with the other eye the voter was not allowed to vote. I ought to say that the mayor of the city then was a candidate for member of Congress. Oh! we had a lovely time that day! [Laughter.] The views of my friend from Albany [Mr. Harris] were illustrated in the city of Troy on that occasion in the most beautiful form possible to be conceived of. The law then did not emasculate the power of the mayor which was so necessary to his respectability. In 1863, when the gentleman who was elected by the majority of the people of this State in 1862 was holding the office of Governor, and when the riot broke out in the city of New York, the city of Troy followed in the same wake. We had the old police, and the mayor was the head of that police, and, in the absence of the mayor, the recorder of the city. The riot broke out at ten o'clock in the forenoon. The mayor was absent. The recorder came forward in the middle of the street at the head of the police, but said not one word, but stood and looked on while the mob was destroying the office of the Troy *Daily Times*—certainly one of the most respectable newspaper establishments in the State. This mob followed Mr. Demers, who was acting then as one of its editors, and who is now the editor

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of the Albany *Evening Journal*, not knowing that it was Mr. Demers, and threatened that if they caught Demers they would hang him on the first post they could find. The recorder of the city stood perfectly still and never uttered a loud word. He is not a bad man—he did nothing. Had he held a high office in the literary interest of this State, he could not have been more useless than he was on that occasion. [Laughter.] That mob went then and broke into the jail of the county and not a word was said by, and no action taken on the part of, the police to prevent it. They allowed this outrage to be perpetrated, and the alleged perpetrators of four different murders to go at large—indeed, every person confined in the jail was released except two negroes, who were left undisturbed in their cells. The mob then went to the house of a citizen who need not be named here, but who was in no way connected with office himself, and who had never been in the receipt of the profits or fees of office, directly or indirectly, and who had not been in the city for three days. His wife was compelled to leave her comfortable and quiet home at the bidding of the mob, and to take refuge in the houses of her neighbors, and yet not one word was said by the authorities to prevent the outrage. Private individuals and good men were addressing the crowd and trying to induce them to keep away, but the city authorities were silent and powerless. Again during the day the same infuriated mob presented themselves before the same mansion, and the same scene was re-enacted. Then they went to the other parts of the town, attacking those who were feeble and unprotected, destroying property, and threatening lives, until one o'clock at night, utterly unrepressed. Citizens, however, went to the recorder and to the mayor and volunteered to take up arms, to take up clubs, to do any thing to repress this violence; but in vain; their offers of aid were rejected—and why? I will not say. But I will state a fact, and leave the Convention to judge for itself. The very next year the man who was mayor at this time ran as a candidate for Congress. Not one effort was made to control this barbarian band of desperate men. About nine o'clock at night application was made on the part of the citizen whose habitation had been so often threatened during the day, to the mayor, to send the police to protect that house, as it was still publicly avowed that that house was yet destined to attack and destruction. The mayor refused the request with derision. A few dear friends, whose kindness that individual can never forget, were generous enough to take the most valuable part of his furniture, the keepsakes of his life and family, under the protecting shade of evening, across an alley into the basement of the Episcopal church in the neighborhood, and stored them there. At one o'clock at night the mob came, and instead of the mayor of Troy being there to protect the property, he was at his own home, as unconcerned as if profound peace had reigned in the city. When it was found that this mob was there, when it was found that the authorities did not propose to offer the citizen any protection whatever for his family or property, one hundred private citizens organized themselves at the arsenal into a military company, and, with a swivel gun, ran down to the scene of disorder and outrage. When they arrived there the house had been gutted from turret to foundation stone, and then, when this military organization appeared, the mayor of the city himself came upon the scene. He harangued the crowd, said that they were doing wrong and that they ought not to do so any more. They said to him, "Send away the military, and then we will go." He went to the military and utterly forbid them taking any action whatever, and ordered them to return to the arsenal, and they submitted to a public order in a manner which did honor to their respect for authority, however galling to their spirit as men. They wheeled about and marched to the armory, and on their way they were pelted with mud from their point of departure until they were sheltered by the walls of the armory from further insult. The mob then betook themselves to the mansion of the Hon. John A. Griswold, situated in the immediate neighborhood of their outrages, and told him that they understood that he had his kitchen full of negroes, and that he must turn them all out of his house, and must agree to discharge his colored coachman the next day, or they would make an example of him. Mr. Griswold said, "I have been over in Second street, and I have promised you every thing if you would desist from the destruction of my friend's mansion. The owner of the house was absent and his family without protection. You refused me there, and now I refuse your demand; I am prepared to defend myself, my family, and my property." The miscreants slunk into their holes and dens. That was the state of things in the year 1863, in the city of Troy. In 1864, when our election took place, we had renewed at the polls of the eighth ward of the city of Troy, and in four other wards, as I have before stated, the precise scenes that were enacted in 1862, except that the man who was a candidate for Congress then, was not himself mayor of the city at the time, his office having previously expired. The citizens of the eighth ward went to a meeting of men that assembled in a republican hall that night to hear the returns from the election, when every body—I will not say every body—but a great many good men were rejoicing that the choice of the people had again fallen upon that eminent patriot, Abraham Lincoln. They said to their fellow citizens, "We have in 1860, we have in 1862, we have in 1864 been trodden down in our attempts to exercise the rights of freemen, in our attempts to vote in the same direction that you think you ought to vote. We have suffered what we cannot suffer again and what we will not suffer again. If you will not give your aid to us, to create a state of things that shall give personal protection to the voters of the eighth and ninth wards of the city of Troy, we must cease our attempts to vote. Will you do it?" Our fellow citizens said they would do it, and a committee was appointed to wait upon the citizens of Albany, to see what should be done. I was chairman of that committee, and I came to the city of Albany. I resorted to the office of one who for more than thirty years I have loved as an elder brother [the gentleman from Albany,

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Mr. Harris], and I said, "Now we at Troy are in this condition (describing our condition as I have described it here to-day); will you at Albany stand by us in an attempt to protect our lives, our persons, our families and our property?" That friend said "Yes, we have the same state of things here in the city of Albany that you have in Troy, but peculiar circumstances, that is, the presence of national troops, saved us from riot in 1863; but we have all the dangers that surround you. They proposed, in July, 1863, to hang Judge Johnson upon a tree before his own house in State street, because he was supposed to have written certain articles in the *Evening Journal*, in regard to a distinguished individual, who was supposed to be the 'friend' of the outbreaking classes" Said he, continuing—"That is not the only trouble we have had in Albany. It was but a few months before that the president of an important incorporation in this city, the New York Central railroad, employing a large number of hands, was designed to be treated with violence, because the pay roll was not put in precisely the same shape that certain turbulent spirits wished to have it put in." I see before me to-day [Mr. Corning] the gentleman who was named to me by my friend as the one whose life would probably have paid the forfeit, except from peculiar circumstances, several months before the outbreak in July. My friend said also on the subject of the elections: "In the ninth ward of Albany, yesterday, we had the same scene that you had in 1862. The mayor of the city was present during the turbulence and violence and riot which existed in the ninth ward, and if our friends are right in their notions he aided the disturbance instead of trying to quell it. Certainly, we will join with you heart and hand." Thus encouraged, I went to others; and if I meet that friend to-day, battling to destroy the system under which I have been protected for the last three years, he may well pardon me for saying that I am "amazed" to see the position which he occupies. Now, sir, that law was carried through. It was carried through by such representations as this—that crime of every kind was unpunished in this district, and especially in the city of Troy. I did not speak of the city of Albany before the Legislature; I only spoke of what I had seen and heard at my own home. I told the Legislature that within three hundred feet of my own residence, in the preceding fall of 1864, a young man by the name of Sargent, the treasurer of the Rensselaer and Saratoga Railroad company, at eight o'clock of a moonlight evening, was stricken down and murdered by a bludgeon, and his pockets rifled, and the perpetrators of that robbery and murder were never discovered, and were never punished. Let me say to my friends who are not acquainted with the city of Troy, that three hundred feet west of my street is the most valuable and ordinarily the most quiet portion of the city. In that street we are removed from the ordinary haunts of the "roughs." Mr. John L. G. Knox, one of our best citizens, early in the winter of 1864 and 1865, was knocked down and garroted before the First Presbyterian Church in that same street; and at a still later period, before the enactment of this law in 1865, Mr. Gurden G. Wolfe, one of the most respectable residents of Troy, was thrown down on Sunday evening before the post-office and brutally treated in the street, and yet not one of the perpetrators of these outrages and crimes was ever punished. My colleague [Mr. Francis] has alluded to the robbery of Quackenbush & Co. in that city. Not one of the perpetrators of that robbery has ever been discovered or punished. We thought it was time for something to be done, and the Legislature of the State was kind enough to do it for us. Now, I say to my republican friends—pardon me if I say republicans—I would not say republican as distinguished from democrat were it not from the necessity of the political positions in this State, for I suppose that the democrats are compelled to support this report as a political necessity, and not from what are their convictions of right and wrong in regard to the police of this State—I say there is a power over them that is greater than the power of individual opinion, and I say to my political friends living in other parts of the State that I claim, through the exercise of the power of the State, protection for myself, protection for my wife, protection for my children, protection for my grandchildren, and protection for my habitation. If the State does not protect my property, it must at least protect our lives. You have a right to do it; it is your duty to do it. If you do not do it there is a Power above that may forgive it, and poor human nature must try to submit. I say, sir, as I have said before, that protection and allegiance are correlative duties. It is so. I will appeal as well to republicans as democrats in this Convention, who know the history of my life to bear me out, that I have not fattened upon political advantages. I prefer to procure my subsistence by any conceivable form of honorable industry to feeding from the public crib. And, sir, I wish to say in regard to the capital police, when my friend speaks of it as a "political machine," that I do not exactly understand those words as he uses them. As I understand the use of the term he has adopted, it means that this law was passed as a means of getting fat jobs and political favor for political friends. I hope my friend [Mr. Harris] does not mean to include in his denunciation my respected friend from Richmond [Mr. E. Brooks], who, on the other side, when the metropolitan police bill was passed, voted for it as a member of the State Senate, whatever may be his views when his political relations have changed. [Laughter.] I hope he will not include himself among those who have adopted that measure to secure political advantages. But it is "a political machine," is it? I call the attention of such republicans as are afraid that our republicans are going too far in regard to this subject, to this fact, which cannot be disputed. Of the police in the city of New York to-day, I am informed that nearly two-thirds, certainly vastly beyond a majority, are democrats. I know that in the city of Troy a majority of the policemen, who have a compensation of eight hundred and fifty dollars a year, which certainly is a very desirable compensation for a laboring man, are democrats, were appointed as such, and continue to vote as such, notwithstand-

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ing they hold their position in the police. I was told last year (I do not know how it is now) that a majority of the police of the city of Albany were democrats. I hope that my friend from Albany [Mr. Harris], who led off in this debate is not so strong a partisan as to wish to destroy the police, for this reason, if it happens to be true. Now, sir, my friend from Albany answered me a question which I put to him during his remarks, with very great adroitness, but I do not know now what his answer could have meant. Am I doing injustice to my friend when I say that he dwelt long and earnestly upon that portion of his remarks in which he regretted the manner in which the mayor of the city of New York had been shorn of his power over the police of that city? When I put to my friend the question, do you think it was a calamity that Mayor Wood had not the power over the police of the city of New York, at the time he sent a telegraphic communication to the Governor of Georgia, that if he had the power to send on the arms and munition of war purchased by that State to battle down the government of Union, he would send them forward?—

Mr. ROGERS—I would like to make a suggestion to the gentleman from Rensselaer [Mr. M. I. Townsend]. I would inform him that Mayor Wood sent forward the Mozart regiment to the war, having equipped the regiment himself.

Mr. M. I. TOWNSEND—There was a time when Fernando Wood was convalescent. [Laughter.]

"When the devil was sick, the devil a monk would be;
But when the devil got well, the devil a monk was he."

After he had done all he could to bring on the war, after he had done all he could to aid the rebels, it seemed to be popular to sustain the government for a time, and for a time Wood did sustain the government. But the exigencies of the time changed and the devil was no longer a monk, and now Fernando Wood has the affrontery to stand up and deny that he ever had any thing to do with loyalty at all. Now, sir, my friend from Albany [Mr. Harris] would not answer the question I put to him. He could not answer it, for he knew he was talking political nonsense.

Mr. ROGERS—I would like to ask the gentleman—

Mr. M. I. TOWNSEND—I decline to give way to the gentleman now; at another time he and I can talk this matter over. I say that my friend from Albany [Mr. Harris] knew that he was talking political nonsense. Let me see if he will dispute the position I take now? Will he dispute that if Fernando Wood had had control of the police of the city of New York, on the 13th, 14th and 15th days of July, 1863, instead of the police commissioners, in all human probability, what was then a riot would have resulted in a rebellion. Let me tell my friend that he is handling edged tools when he proposed to put into the hands of the worst men that God ever suffered to live in a civilized country, a power even greater than the power of the State itself. Sir, I have lived in those days and I shall not soon forget them. These policemen at that time were under the control of loyal men, and they did their duty nobly—democrats as they were. They went into these disloyal crowds, which were burning orphan asylums and hanging citizens to lamp posts, and murdering men and women here and there in the streets of the city, to speak nothing of arson and robbery which was rampant in nearly every part—and, democrats as they were, they most nobly did their duty. But, sir, if those who had command of the police on that occasion had wished to see rebellion succeed, had given commands, not only to make rebellion succeed, but had sent men to beat and kill the negroes as they were fleeing from one part of the metropolitan district to another, had sent the police to arrest those that were putting out incendiary fires, had commanded the loyal regiments of that district to disperse or confine themselves to their armories, while incarnate fiends were doing their work of destruction and rapine, every arsenal would have been in the hands of the rioters, every fortress about the port of New York would have been captured by these rebels, and we in the rural districts might have learned too late that we had committed a folly by leaving power in such unworthy hands, which ought to have sent us and which had sent us to political perdition. The power of those who do not know enough to govern the State as it should be governed, ought to perish. If the republican party do not know enough to govern the State as it should be governed, I hope that somebody who does know enough will be put in its place. There is no use in being squeamish about this thing. There is no use in making mistakes. We are not at liberty to make mistakes. Intrust the local powers of the large cities created and controlled by the populace with the police, and the state of things that existed on the thirteenth, fourteenth and fifteenth of July, 1863, is liable to exist again in full force. The rebel army, it is true, had been at that time defeated at Gettysburg. But the power of the friends of the rebellion was yet supposed to be overwhelming. Every body knew many things which were not known by the distinguished public functionary who harangued in favor of the rebels on the fourth of July, at the Academy of Music, in New York, for he had not yet heard whether "there was any Holy Ghost." But still, sir, a large portion of the people of the cities supposed that the rebels had been only checked, and not defeated, and this riot was but the refluent wave of feeling from that ocean of disloyalty that welled up in aid of the rebellion in Pennsylvania and New York on the third and fourth of July, 1863. Now, forsooth, my friend [Mr. Harris], who has told us this morning, and told us truly, that he loved this country so much, and had manifested that love so much, proposes not only to turn over his friends in the cities to the tender mercies of the uncivilized spirit that gets up mobs, but to put power in the possible executive of the city of New York greater than that possessed by the Executive of the State itself. Ah! is there no danger in such a power? My friend tells us that we are four millions of people, and that a million and a half of those four millions are in our cities. Shall the State have no control over that million and a half of its citizens? Shall the State have

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no power of repressing disorder in all the vast realm occupied by them? Shall the State have no powe of protecting the good people who live there? Shall the State have no power of wielding that million and a half of people that are constantly increasing, as the gentleman says—wielding them to save the life of the State, when they may be wielded by local power to throttle the State? My friend must pardon me. This whole thing is neither more nor less than political nonsense. What country has set us an example? I ask it here that it may be answered during the debate. What State or country has set us the example of intrusting to its cities this imperial rule which the government cannot control? My colleague [Mr. Francis] has referred to the case of the free cities in the middle ages; but those free cities were States. They were not cities in States—they were States. They possessed the power of States, and when Hamburg spoke, it spoke for the State of Hamburg. When Hamburg displays her only city on her flag in the port of New York to-day, she shows all there is of her State. So it is with the other free cities of Germany, and still more was this true of the Italian cities. Take the government of France. In France the central government appoints the mayors, and it appoints, either directly or indirectly, all who hold power in the cities of France. When the minister of police sends out his fiat upon the wires to the different departments of the empire, he reaches every man intrusted with any authority in regard to police matters throughout the entire empire. How is it in England to-day? She has what we have got to have at no distant day. The people of England are men of practical common sense. You cannot put your foot in a village, in any part of the three kingdoms, without seeing men in the uniform of the police, owing their appointment to the government, and charged with the preservation of order in the municipality. And if the municipality or the village wishes to join itself with the enemies of the country, wishes to join itself with the enemies of public order, the policeman says: "I get my authority from a higher power"—it is the "lion and the unicorn that is emblazoned on my shield—they are the emblems that I look to for my authority." In the early stages of society, when there were only a mass of small villages throughout the State, the state of things which now exists was wisely adopted. But, sir, the State has immensely expanded, and if it was not wrong in the former days for the State to keep control over the preservation of order and the protection of its citizens, or the protection of its property; it certainly cannot be wrong to retain that control to-day. For, instead of time showing that the fathers were wrong, time has shown that the State not only must keep the right to control, but at no distant day must take absolute control of the means of preserving the good order of a State in all its departments. My friend says that a policeman is a local officer. He is a local officer; that is, he is called to act for a locality, and he is to that extent a local officer. My friend says that to be consistent with our institutions the policeman should be elected. Sir, those men who put on the "blue" in the days just past by, were policemen. Those men in this capital district who carry a club, and those men in the frontier district who carry a club, and who, thank God, on extra occasions carry something a little more effective, and those men who in the metropolitan police district carry a club, and those men in "blue" who went to the defense of their country and took the sword and the musket—have not held and do not hold their places subject to the caprices of local elections. Did we call on the sixth ward in the city of New York, and the eighth ward in the city of Troy, and the ninth ward in the city of Albany, to elect their soldiers who were to go and battle for the life of the Republic, and thus send rampant, hot mouthed politicians, many of them grossly disloyal, to defend all we held dear? No, sir, we sent such men as would take the oath of fidelity, and upon examination satisfied the enrolling boards that they were proper men to be sent. It is all a mistake, it is all a fallacy that you cannot have men protect your houses unless you elect them from the very men against whom you want to watch and guard.

Mr. ROGERS—I move that the Convention adjourn. [Laughter.]

The hour of two o'clock having arrived, the PRESIDENT resumed the chair, and announced that the Convention would take a recess until seven o'clock in the evening.

EVENING SESSION.

The Convention re-assembled at seven o'clock.

The Convention resolved itself into Committee of the Whole on the report of the Committee on Cities, Mr. RUMSEY, of Steuben, in the chair.

The CHAIRMAN announced the pending question to be on the amendment proposed by the gentleman from Putnam [Mr. Morris], to the first section of the bill.

Mr. M. I. TOWNSEND—Before our adjournment to-day I had taken occasion to look somewhat at the question under discussion before the committee. I had reviewed the state of things existing in the capital police district in the neighborhood of Troy, Albany, Cohoes, West Troy, Lansingburgh and Greenbush, to which locality the powers and duties of the capital police apply, previous to the adoption of the law creating a capital police in this district. I had shown, sir, that the creation of that body in this district did not grow out of any partisan feeling. I had shown that it did not grow out of any desire to create offices for political friends; I had shown that the capital police had not been wielded for any political purpose; that a commission consisting confessedly of commissioners, all of whom were republicans, had appointed a board of policemen, whose salaries were valuable, being eight hundred and fifty dollars for laboring men, a majority of whom were of a political faith entirely diverse from that of the commissioners to whom they owed their appointment; I had alluded to the fact that the operation of the police in the city of New York was so far forth non-partisan in its character, that it was alleged, and I believe truthfully, that two-thirds of that police against whom gentlemen make such a terrible outcry,

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were to-day of the same political faith with the voters of that city; I had alluded to the state of things in 1863, when the streets of the city of New York ran with blood, when the torch of the incendiary was active throughout that entire city, and when, as I believe, but for the fact that the police of the city was in loyal hands—and for that matter let me say that if on that occasion the police of the city had been under the control of the then mayor of the city it would have been in loyal hands, for my neighbor, Mr. Opdyke, from the city of New York was then its mayor, and not that high-flown patriot, Fernando Wood; but from the fact that in the city of New York the control of its police was in loyal hands, in all human probability, what was a mere mob, continued for three days, employed in riot, arson and bloodshed, would have been a revolution, and we should have had to fight with the elements of rebellion here upon our own soil, as well as at the South. I stated in the course of those remarks, that when the citizens of Troy appointed a committee to see whether a police that should furnish us protection should be created upon this locality, I came as that committee from the city of Troy, and consulted with my most respected friend from the city of Albany [Mr. Harris], from whose lips were heard to-day these terrible denunciations, which he poured forth upon his party in the State, his party in the city of New York, and the men with whom he has acted, in all times past—consulted with him, and that the plan of the capital police was adopted under his advice, and under consultation with him, and under the announcement that but for fortunate circumstances Judge Johnson would have been hanging upon a tree in State street; that but for fortunate circumstances the life of Erastus Corning would have been taken by an infuriated mob in this city, and that the police in this city, instead of being able to protect the public, were, on election day, prevented from preserving order by the action of its mayor, in whom, by this proposition, all power is sought to be concentrated—for it was gravely suspected that the mayor himself had given his aid and assistance to the violaters of the law, instead of giving his aid and assistance to those who upheld it. In speaking of my friend from Albany I ought to be a little more explicit, that this Convention may understand our relations even more perfectly than I stated them to-day. For four and thirty years I have been the personal friend of that gentleman. He never had a public aspiration that I did not aid. I stepped out of the ranks of my party to vote for him for judge when he and I differed in politics; I sustained him when he was elected to the United States Senate; I sustained him when he sought to be re-elected to the United States Senate; and ten days have not passed over my head since, in a quarter where I hoped it might be useful, I pressed the name of Ira Harris, though unknown to him, for a most important public position, so that nothing but kindness can rest in my heart toward my friend. But that gentleman to-day has read to us a lecture upon the enormities committed by the men who stayed up his hands—because it was upon the Legislature of this State that the attack was made—upon the enormities committed by the men that have stayed up his hands during the last six years, in the terrible struggle in which this country has been engaged. He tells us to-day that these laws have been passed by men combined together through "the cohesive power"—and there he dropped the quotation; but what my friend meant was "the cohesive power of public plunder;" and so, sir, it will be accepted, and when we next go down to the polls and engage in the canvass in this State, the powers that wish that the law should not be enforced, the powers that wish there should be no Sunday, the powers that wish there should be no good in this world or the next, will quote the speech of my distinguished and benevolent and religious friend from Albany, to show that when the Legislature of this State enacted that the brothels in the city of New York, and all its holes and dens of infamy, should cease to be publicly offensive after twelve o'clock on Saturday night, they did so through the influence of "the cohesive power of public plunder." My friend did not learn that lesson in the churches. My friend did not learn that speech in the house of God. "The cohesive power of public plunder!" These commissions created for the purpose of aiding in schemes of public plunder! I have told you, sir, and my friend sat silent when I told you, that the scheme of the capital police that protects us in this district, was planned by Ira Harris and myself, and I can rely upon this Convention, I can rely upon this State, to acquit me and him from entertaining the idea of public plunder when we conceived the idea of a police that should protect our citizens. Public plunder! Has the hand of my friend been crossed with gold growing out of the creation of the capital police of the city of Albany? Has my hand been crossed with gold growing out of the creation of the capital police for the city of Troy? "The cohesive power of public plunder!" Why, sir, all the salaries received by the capital police commissioners in this entire district, operating in a region that has a population of about two hundred thousand souls, all the salaries together are less than ten thousand dollars for Albany, for Cohoes, for Watervliet, and its thirty thousand people, for Lansingburgh, for Troy, for Greenbush, are all together less than ten thousand dollars in the year. When my friend and myself sit down to concoct a scheme of public plunder we shall ask more than that, although I trust we shall not get so far out of the track of genuine republicanism as to concoct any scheme for such purpose. We have never done it, and this Convention will not believe that we have done it. But my friend, in his zeal to vindicate what he considers constitutional right, has fallen into a most singular mistake. My friend has included among the commissions which he says have been created by the Legislature, under "the cohesive power of public plunder," street commissions, *i. e.* commissions for opening streets. Now, my friend is a good lawyer. He has been a good lawyer for years. I begun my acts of friendship in supporting him for the office of judge. I ended—

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the last act of kindness I ever did toward him, although he knew nothing about it, by recommending him for a similar position. Now, my friend will remember, the street opening commissioners are not created by your Legislature. The corporation of the city vote that a street shall be opened. They tell their lawyers to go to the courts and nominate commissioners. The commissioners are appointed by the court on the nominations of the officers of the common council. Aye, well might my friend talk about the cohesion of public plunder, as evinced in cases of street opening commissions; but unfortunately for his argument, he got the saddle upon the wrong horse. It is this local legislation; it is this local power, that is so clearly defined by the gentleman from Albany, which committed the plunderings that have been committed in the opening of streets in New York. Why, sir, and I want my friends in this Convention to put down the numbers, because I am going to compare certain other things with these numbers, the fees of the commissioners, in the opening of Church street alone, exceeded one hundred and twenty thousand dollars; and I shall show you that there has been no year when all the salaries of all the commissioners holding the republican faith have amounted to one-half that sum. Men sometimes get very much excited about matters without looking at them. As I said to my friend, and to another friend in this Convention, I do not go to New York very often; I do not know much about what is going on there; but there are a great many things that I do learn, incidentally, about that city. Now, among the commissions in the city of New York I find the emigrant commission. I find that that commission is filled by half republicans and half democrats, and that the commissioners have no salary. Is there much cohesion of the power of public plunder in such a commission? I find that there is a commission called the Central Park commission. I find that the majority of that commission are democrats. I find that those commissioners have no salary. Public plunder was the object of their creation, was it? Making fat offices for political friends was the object of creating the commission, and republicans committed this enormity through the cohesive influence of public plunder! No, sir. The enunciation of such an idea would be simply ridiculous. I find, then, that there is what is called the police commission; that there are four commissioners—that those commissioners are elected by the Legislature; that three of them are now republicans, and one a democrat; that the term of one of the republicans expires the present winter, and in all human probability that office will be filled by a democrat, so that the board will be a tie—half republican and half democrat, and that three-fourths of those holding office under the commission are themselves democrats. In connection with this commission I find that there is what is called a health commission, consisting of the four police commissioners and four additional commissioners, called health commissioners simply, and the health officer of the port; that the health officer of the port has no salary for discharging his duties upon this commission, and that these same police commissioners are also commissioners of excise. I find that for the three commissions, the members of the police commission, one of whom is a democrat, and two of whom will be, receive salaries of seven thousand dollars each; that the commissioners who are merely health commissioners receive salaries of four thousand five hundred dollars each. Now, is there any gentleman in the Convention that can tell me what amount of money these commissioners, as excise commissioners, have received the last year? I am ignorant, myself. My friend, Mr. Hutchins, says that this board, as commissioners of excise, have, for the city of New York alone, collected, the last year, about twelve hundred thousand dollars, and that for the last year before this power was intrusted to this commission, there was but twelve thousand dollars collected—paid for licenses in the same city! Now, does not my friend from the city of Albany feel that here is taxation without representation? that it must be an enormous burden upon the tax payers to have twelve hundred thousand dollars paid into the treasury, when the city government the previous year collected the enormous sum of twelve thousand dollars? It is a burden under which the tax payers ought to groan, and they must groan—at all events when they read the speech of my friend from Albany in their behalf. In addition to these, there are the fire commissioners, five in number, who receive three thousand five hundred dollars each, as a salary. I find that, taking this statement, these commissioners that I have named receive together $70,500, and that the republican members of that board receive less than $60,000, a sum, let it be remembered, scarcely twice what the mayor of the city receives from his various salaries and perquisites every year. Does not my friend from Albany [Mr. Harris] know that the great cry against the commissioners of the police is raised because they have done their duty? Does not my friend from Albany know, and do not my friends from the country by this time know, that the difficulty is, that the cause of this enormous outcry is that when Saturday night comes vice must hide its head, and keep it hid until twelve o'clock on Sunday night—that if my friend happens to be in the city of New York he may go to the house of God without having his way blocked by the reeling, drunken maniac, in the midst of the Sabbath? It is not taxation, sir, that has made the trouble. It is not the denial of local governments that has made the trouble. It is the check that, for a moment in the seven days, is put upon the open exhibition of vice; and my friend should know it. He occupies a position before the moral and religious world, that makes it criminal in him not to know it. There is not a house where God is worshiped in the city of New York, or an inmate of that house, a frequenter of that house, that does not know that the trouble with the police commissioners in the city of New York, and the excise commissioners in the city of New York, and the health commissioners in the city of New York, is that they put a little check upon unblushing, barefaced, brazen vice. Here is another grievance that the city of New York has sustained in this immediate connection; a terrible grievance. They did not have the privilege last

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year, when the hand of God struck so many portions of the country, of having a visitation of the cholera, and it was a terrible grievance. Here is John that ought to have died, Patrick that ought to have died, James that ought to have died, Charles that ought to have died, and the little families gathered and nestling in the tenements of the city, ought to have been killed off; and it was cruel, it was wicked in the Legislature to see that the pestilence was kept from those doors. Oh, my friends, can it be wondered at that there should be weeping and mourning over the wickedness of that Legislature which prevented that most glorious result of self government, to wit. the bringing of cholera to the doors of the chosen population of the city of New York. But, Mr. Chairman, this is taxation without representation! Ah! it is! Well, if it is, we must stop it. It is our duty to stop it. Albany county and Saratoga county join. They have got a large river constituting the dividing line. The public want a bridge from Albany county to Saratoga county. Saratoga sends her two representatives to Albany. Albany sends her four to the capitol. Those six men represent the two districts. The Legislature vote that there shall be an expenditure of money for bridging that river. They appoint commissioners to see the money expended. The money is expended. The counties are taxed for it, and my friend from Albany look over this act, and says, as a statesman and jurist, that here is a terrible piece of work. Here is taxation without representation. Sir, there is no such meaning to the old time honored phrase of dissent against oppression, called "taxation without representation." Take the metropolitan district of the city of New York. The city of New York had twenty-one representatives who sat in the Assembly that passed all these laws. The county of Kings has nine representatives who sat in the Assembly that passed these laws. The county of Richmond has one, and the county of Westchester has one—I mean in the metropolitan police district—making exactly thirty-two; that is, exactly one-quarter of the entire house of Assembly represent the district in which this legislation is to operate. And yet, forsooth, we are told here, and we republicans are asked to give countenance to it, that there is no representation. There was representation in that Assembly; and I say to my friend that I think every member of either house, whether Senate or Assembly, that created these commissions, who thought and acted with him upon the subject of public politics and stayed up his hands during the time that he held the important position as representative of this State in the national Senate, every man of them at all times voted for these measures. And what shall be said of such men? Are all the men living in that district who think as my friend thinks, who have thought as my friend has thought, who have acted in public places as my friend himself acted, are they to be stigmatized as having so acted through the influence of public plunder? I, for one, do not think so of the men with whom I have acted. I do not believe it; I utterly repudiate any such idea. I put it to the men in this Convention who dare to let their minds work in favor of good order; I put it to the men in this Convention who dare to give their influence to protect the quiet, the morals, the order of the citizens of this State; I put it to the men who would protect the wife and children at home from harm, rather than the brawling, drunken father, fighting in the street; I put it to that class of men to know if the time has come in this State when it is oppressive to a people to preserve their lives—if the time has come when it is oppressive to a people to preserve them from the pestilence that walketh in darkness, and the destruction that wasteth at noon-day? A friend of mine in the Convention, whose sympathies, as far as I have ever seen, are always on the right side, and whose heart wells up with the impulses of benevolence and right feeling, said to me to-day, when my friend and colleague from Rensselaer [Mr. Francis] was reading the announcement that men representing twenty-two millions of property in the city of Troy—three millions more than is shown upon our tax lists—that men representing twenty-two millions of property in the city of Troy, had expressed their wish that they and their families, and their properties might have the protection of the police system that exists here—my friend said: "Why give so much force to the opinions of rich men; why call on them merely; why not ask the poor of the State how they feel about it?" Now, to that query, if it rises in the minds of any other individual, let me make this answer. The cry is that this system was instituted for the purpose of drawing money out of the tax payers for the benefit of political favorites; and that collection of recommendations was obtained for the purpose of showing that those who paid the taxes in the city were willing to bear their burdens—anxious to bear their burdens if they might have protection for themselves, their property and for those that they loved better than their lives. Now, how do the poor feel about it? What has been the result in this city? I do not go to New York; I do not know what happened in New York about election time; but I will tell you what happened in my own city—in the eighth ward of the city where I live. If a man belonged to one of these classes, above all, if a man of a particular nationality and religious faith ventured to vote differently from his neighbors, his windows were stoned out the very next night after the election, or he himself knocked down in the street the first dark night he was out, and his family were insulted and maltreated wherever they appeared. As gentlemen here have somewhat indulged in instances, let me illustrate it by a single occurrence that happened to myself. On the morning of the election in 1862, Michael Riley, a man who had voted with me every year for ten years, came to me in the morning and said: "Mr. Townsend, I can't vote with you to-day; I will stay at home; I won't go and vote; I believe you are right; but I can't vote with you to-day; there is such a state of feeling to-day that if I go and vote with you they will poison the cows or kill the children." And I tell you, in the sixth ward of New York, that my friend from Albany [Mr. Harris] has

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characterized, and not I, if a man of a particular nationality and a particular faith had voted the republican ticket in the fall of 1862, they would have "poisoned the cows or killed the childer." That is the condition of our laboring men. That is the condition of the poor; and there is not a man of all that class that does not pray God, if he ever prays to his God in any form whatever, that he may be protected from this state of things. But my friend from Albany says that if the people in these cities do not elect men that will protect them, they must suffer the consequences! Now, gentlemen, take that sentence and weigh it. If I happen to live in a ward, or in a town where the temporary majority is controlled by the riotous and the outbreaking, and if the riotous and the outbreaking elect the persons that hold the offices, and the officers are controlled by those men, my friend gravely says that I must bear it. Gentlemen, is that to be the condition of the cities of this State? Take the sixth ward of the city of New York, if this provision shall become constitutional, just as my friend puts it, because I have not said a word about it; suppose, now, in the first place, the sixth ward elects a constable or police officer, and the same district elects a police magistrate. My friend going to the city of New York to attend some of the religious anniversaries in which he takes an interest, is compelled, from the location in which his boarding-house is, to pass through the sixth ward. In full view of the constable elected by the local authorities—by the "sovereigns" whom a friend of mine in this Convention has often talked about—elected by the sovereigns who have not yet lost their sovereignty, in plain sight of that man thus elected, my friend from Albany is knocked down in broad daylight. The man who knocks him down is a constituent of the constable, and he will not arrest him. But my friend happens to recognize the man that assaulted him, and goes before the magistrate elected by this redoubtable neighborhood, and makes his complaint. The complaint is heard, and the accused is discharged, or the accused is discharged without a hearing. Suppose, now, a quiet citizen of the ward approaches my friend and says: "You ought to be protected. We used to be protected here, but you have had a great State Convention, and in that Convention you had a very experienced member. I think he lived up in Albany, and bore the name of Harris. He told the State that if the sixth ward would not elect proper men, we should have to sweat under it. The Convention adopted his views, and you see what a fine time we have of it. We have to sweat under it, and as you have come into the sixth ward, I do not see but what you must sweat under it." What could my friend answer if, under such a state of facts, such a statement was made to him? If there could be any answer to it I would like to hear it, if not now, at any future time.

Mr. COLAHAN—I would like to ask the gentleman what these suppositions and imaginary instances that he is relating have to do with the principles of republicanism and municipal government?

Mr. M. I. TOWNSEND—So far as republicanism is concerned, it is a matter that my friend does not understand. I cannot explain it to him to-night.

Mr. COLAHAN—I am trying to understand it.

Mr. M. I. TOWNSEND—My friend has sinned away his opportunity, and at this late day I shall be hopeless of making him understand it; but if he did, he would certainly fall in with us, unless driven off by believing the doctrines of my friend from Albany [Mr. Harris]. I have told this Convention the state of things in this district that preceded the creation of our capital police. I told the Convention of the burglaries and garrotings in the public streets of my own city. I told them of mobs on occasions other than election occasions, and others on election days. I told them how the lives of the best citizens of this State had been threatened and endangered. Now, let me state to this Convention what is the condition of things produced by the adoption of the capital police system. Crime has not ceased to exist either in Troy or Albany; but the amount of crime coming under public notice during a single year is not one-third now what it was before the establishment of this police. The amount of property lost by fires is not one fifth now what it was before the establishment of this police. The police have either prevented incendiary fires or, as vigilant men walking night and day, have discovered the first indications of the destroying element, and thus prevented their spreading, until the number of fires is now not one in five to what they formerly were. Citizens are no longer garroted in the public streeets. Burglaries of any considerable amount have not occurred for the last three years. Possibly a single thief has crept into a hall in the day-time and sneaked off with an overcoat. A single thief has crept into a house and carried off a small amount of property occasionally in the night; but these large burglaries such as the great Quackenbush store robbery in our own city, are unknown for the last three years. And let me tell my friends in this house who care for good order whether that good order be democratic or republican in its character—let me tell them that when in the silent nights of summer a man walks abroad in the city of Troy there will be no hour, even of the silent watches of the night, when the listening ear will not detect the foot-fall of the vigilant, ever active and faithful policeman. And when we lie down at night, and when we rise up in the morning, we feel that this police surrounds us next to the providence of God. And let me say to you that the feeling with which our lives pass, is a very different thing from what it was at a time when we feared to walk abroad even in the day-time, lest we might be knocked down possibly by a policeman himself, and when we felt that it required two private individuals on active watch to render any locality safe from the political hangers-on and loafers that were yclept police. I ask pardon of my republican friends for the zeal that I have manifested, because I have been talking especially to them. There is not a shot meant to reach over to the other political side of this house. I have been talking to the men that I have stood up shoulder to shoulder with; and who have stood shoulder

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to shoulder with me. I have been talking to the men who profess to act in the interests of good order, whether that good order be secular or religious, of any faith, of any order, of any denomination. In conclusion I will express the hope that the men in this Convention whom I have stood by in troublous times, now happily gone by, and with whom I have so long acted; men whose hearts have beaten responsive to mine, beat for beat for so many years, will not now leave me and my family and my neighbors and their families, to the chance influences that may temporarily control the populace of the cities in which our lot is cast.

Mr. DUGANNE—I offer the following amendment as a substitute for the first section:

"The Legislature may enact, modify or repeal laws for the government of cities containing more than 30,000 inhabitants, and for the appointment or election of their local officers, and may provide for the assessment and collection of taxes, the audit of claims, and the preservation of public health, order and security in such cities."

Because of the importance I attach to the subject before us, and because I have heard expressed in this Convention, from time to time, certain views and opinions that I believe to be based on false conceptions of the relations that our State, as a State, bears to its own citizens, as well as to the national Union, I propose to occupy a few moments in discussing the amendment which I have had the honor to submit. It is an amendment bearing upon its face an assertion of the supreme authority of the people of the whole State over any part and over all parts of the State; but it does not presume to deny that municipalities ought to be secured in the enjoyment of such charter privileges as may not be opposed to a wholesome jurisdiction of the commonwealth over its parts. Our republican system of checks and balances in government is not more identified with the relations of State and nation, than it is incorporated with the political life of towns and counties within a State. The spirit of representative republicanism, emanating from the people in mass, is to devolve as much power and responsibility upon each subordinate locality as shall be consistent with the entire preservation of equality before the law, in that locality, but at the same time to preserve the supreme authority of the whole people, acting through State and national representation, as the great balance wheel and regulator of that delicate machinery which we call society, and which is based on individual liberty and the greatest good of the whole. In the operation of this system, the State, the city, the town and the village are each clothed with its due share of the supreme power, and is constituted an agency of the central government or authority of the whole nation. But this delegated power, vested in local agencies, is never relinquished by the superior body whence all power in our republic must emanate; and hence, whenever expedient or proper, it can be reassumed by the State or nation, and must be yielded by the subordinate locality. There is no difficulty in my mind regarding the nature of republican society, whether it involve the quality of so-called natural or individual rights, or the power of government to extend, limit or abridge those rights. I confess that I have a very trite, it may be a very commonplace, way of satisfying myself concerning the source of law; for I simply go back—and I say it with reverence—I go back to the Almighty Creator of all law, and recognize in Him the founder of society, the sovereign of government, the owner of this created world, with all its lands and seas, and charters and usufructs, now held in fee by nations, states, and individuals. Content with this retrospect, and this belief, in which, I suppose, all of us share, I see no reason why I should not accept humanity—and by humanity I mean the race of human beings organized in society—as the immediate vicegerency of God on earth—the transmitters of divine authority through nations, tribes, and families of men. What does it matter to me, entertaining this simple belief, whether God's creatures be comprised in a single family with Noah at its head, or in twelve tribes, with Moses for their chief, or in all the human species, with its numberless divisions of nationalities and clans? I accept the original, primal authority, as descending through the race, in its aggregate, because I know that if all whom "God has made of one blood" could be gathered into one vast homogeneous assemblage, in them, at once, or in their representatives, would lie the authority and power of a universal republic. M. Garnier Pages, in the French legislative chamber a few months ago, said "that if sovereigns, ministers, and diplomatists could not come to an understanding to preserve the peace of Europe, the people themselves should appoint international delegates to form a European Confederation; and then," continued the French orator, "what was termed a Utopia would become a happy reality." M. Pages, in uttering this sentiment, suggested, in effect, a simple restoration to the peoples of Europe, as a whole, of those original rights of sovereignty to which they, as a whole, are entitled by the right of their humanity, and from which governments and kings, in all ages, have derived their representative authority and delegated power. The entire race, then, I maintain, becomes, in theory, the sovereign depositary of authority on earth, no matter what varieties of Caucasian, Mongol Caffir, Hottentot, and Esquimaux that race embraces. Unpalatable as this theory may be to modern democracy, I ask its opponents what revelation from heaven—what prescript of nature—can instruct me to set apart a single nationality or a single tribe, as the ruling class over all the remainder of God's creatures? What divine intelligence, or human reasoning, on the other hand, can empower me to cut off and expel from the commonwealth a single division of the species, and say to it: "God ignores you, and therefore I reject you!" The historical and admitted fact that the universal people have never exercised power as a commonwealth, since the days of Adam and the patriarchs, does not invalidate their just claim to such sovereignty, any more than the immemorial fact of despotism, ages ago, could furnish an argument against republicanism in the present age. Proceeding, then, from the undeniable postulate of an

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original sovereignty vested by God in our whole race, I reach naturally the sequence that each human nationality, by whatsoever name, derives its authority from the universal people, and that the people of each nationality, in their turn, may delegate portions of their derived authority to States, colonies, or other subdivisions of the nation. I reject altogether, as a heresy alike anti-republican and subversive of just relations—the so-called democratic dogma enunciated more than once in this chamber, that individual rights are the basis of government, and that authority flows upward through society from the parts to the whole, from the integer to the mass. Sovereignty, I maintain, is inherent only in society, and must be exercised by society, as a unit, or be delegated by society to its parts or to the representatives of those parts, who represent likewise the whole. "The government of the people, by the people, and for the people," can never belong to an individual, was never derived from an individual, and can never, in a true commonwealth, be yielded to an individual. It is society that makes law, keeps law, gives law. Outside of society no human being exists, except as a vagabond, like Cain. The human monad may have rights and may claim individual sovereignty; but the human monad is not known to law—he has no place in society—he has nothing to do with government. Accept this dogma of individual sovereignty, this derivation of strength from the fragment, the atom, instead of from the concrete mass, and the heresy of State rights or State sovereignty springs logically out of it, and the rebels were correct in maintaining that States are the sources of national authority, yielding or delegating certain rights and powers to the general government and withholding certain other rights as "reserved rights." I regard as a political sophism the entire hypothesis of "reserved rights" claimed to be held by subordinate bodies politic such as States or municipalities. Reserved sovereignty ought to belong alone to the whole nation; and it is an unfortunate and confounding phraseology which, in article 10 of the constitutional amendments of 1789, assumes that powers not delegated to the United States or prohibited to the States "are reserved to the States respectively, or to the people." How are you to interpret such a collocation of words—"to the States respectively or to the people?" It cannot be the people of the States respectively or of any single State, which should be understood by the term "or the people." It must be to the people of all the States or the nation that powers not delegated are reserved. How, then, can such powers be reserved to respective States? Sir, I reject this doctrine of "reserved powers" in a single State, by whomsoever it be advocated or admitted, whether it take form in the blatant speeches of a Vallandigham or be more speciously inculcated by a republican editor in his declaration that "if the slave States, the cotton States, or the Gulf States only, choose to form an independent nation, they have a clear moral right to do so." No, sir. The underlying and interpenetrating principle which comprehends the recognition of all human rights—that principle which we understand by human equality—forbids the usurpation of independent action through which any part of the nation may destroy the integrity of the whole. There is a national guaranty of human rights inseparable from a commonwealth or republican society. It is a guaranty not to be abrogated by the people of a slave State, a cotton State, or a Gulf State. It is a guaranty, sir, that the rights of each and every State shall be secured by the power of all the States, and that the rights of each and every individual, whether black or white, poor or rich, shall be secured by the power of the nation. Ignore this national guaranty, and the republic departs from its faith and declines toward despotism or anarchy. Sir, were it possible for all the people of the world to establish a universal republic, the basis of their government would be a union or federation of the nations—its principle the equality of representation enjoyed by each nation, and the equality of the people of all nations before the universal law. It would be, in fact, on a broader scale, the principle of our own Federal Union manifest in the equality of representation enjoyed by each State, and the equality of the people of all the States before the federal law. Descend to our State government, and we find the same principle—an equality of representation enjoyed by every county, township, municipality or other political district, and the equality of the people of all districts before the State law. So, in the very ultimate subdivision of authority, we recognize the same vital republican essence permeating the political life of each village or ward, through the equality of representative manhood enjoyed by every citizen and the equality of all human beings before every law. I reject, then, the abstractions that are called natural rights, as well as the dogmas of State or municipal independence, and accept only the substance of equal and exact justice to all men. Human equality is the guaranty of all guaranties, and the right preservative of all rights. Its principle is the soul of that body which we call a republic; to enshrine and perfect it the commonwealth exists; to guard and perpetuate it representative government has always claimed to exercise its functions. Parts of a nation cannot guarantee this human equality — fragments of a body-politic cannot secure it — independent and conflicting States cannot maintain it intact. It is the sovereign power of a whole people that alone can insure to every human being under it an equal place, in his sphere, and an equal representation with every other human being, before the law that he helps to make and agrees to keep unbroken. But, it may be asked, if the original authority of human beings, in the mass, or a family, be conceded, what becomes of the claim to independence asserted by single nations or tribes—or cities like Palmyra or Carthage—a claim coexistent with the history of human communities? I reply that tribe life, however distinct and independent, was only an offshoot of that universal government primarily exercised under the patriarchal form. If the sons of Shem, of Ham, and of Japhet, wandered from their family tents into tribal independence, they did not the less derive their authority so to do from the patriarchal dispensation or polity. When the sons migrated from the father's pastures they took with them

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the paternal blessing, and received for themselves a portion of the authority, which, by consent of the whole family, had reposed in the family head, whether his name was Adam, or Noah or Abram. They went forth as colonists from the parent State, and thereafter, however wide might be the migration of a tribe, its members exercised their derived authority, combined with the independence which strength, isolation or remoteness of location might endow them with. The independence of the tribe thenceforth existed—just like the independence of the individual—on conditions inseparable from all independence. So long as the tribal body politic remained distinct and able to control its own members, and strong enough to resist any encroachment by another tribe, just so long it might claim independence; but whenever a more powerful tribe could subjugate it, or a more numerous tribe absorb, it must needs merge its independence in the authority of the enlarged body politic, whether that authority be manifest under despotic or democratic form; whether it claim to rule through Egyptian governors, Levitical priesthoods, Assyrian princes, Persian satraps, or Roman pro-consuls. Hence the claim to tribal or national independence is perfectly compatible with the principle of derived authority, or of sovereignty delegated or assigned by the whole to its parts. The very assertion of independence supposes the cessation or abrogation of some condition precedent of dependency—the emancipation or liberation from some claim to control. And the independence of a tribe or nationality has always been measured, just like its government, customs, laws and franchises, absolutely on the character of its people and their ability to resist the influence or encroachment of other tribes or nationalities; precisely as the independence of an individual, his fortune and his happiness, depend absolutely on his personal character and his ability to resist exterior influences. But is there no individual independence or personal sovereignty? Yes, sir, I am independent in my thought and sovereign over my action in all things pertaining to myself alone. But, if I am a free agent, I am also a responsible one—responsible in all my relations to other individuals. The single man in solitude may be a law unto himself, but once placed in partnership with one or more of his fellows—once become a member of society, he must submit to the laws of society, and renounce his uncontrolled independence and sovereignty of self. So with the smaller community when merged in the larger; so with the State polity comprehended in that of the nation. Inasmuch as the relations of society, of States, of nationalities, demand from the individual a surrender of his personality, the individual must yield, and his sole guaranty, his sole compensation, is equality before the law. There is no danger, sir, that individual rights will ever be invaded, or that State governments can be overthrown in a republic constituted as ours. When a great people have agreed to form a commonwealth, it is really of little moment what political or geographical subdivisions they adopt; since all these subordinations of popular power may be mere conveniences. State burdens and State Constitutions are but instruments of the aggregate sovereignty—the means and appliances of subdivided authority. Never do the whole people abdicate their supremacy; never can they alienate their responsibility, as the nation, to preserve a sovereignty of domain and an integrity of dominion. I have no apprehension that the instinct of State independence will ever fail to assert itself, any more than that the instinct of individual or personal independence—the attribute of manhood—can fail to make itself felt. The instinct of independence is a natural force, and is the balancing force as opposed to the power of aggregate or numerical popular authority. The natural independence of a man, the natural independence of a community, is, in political science, what the centrifugal force is in our solar system as opposed to that centripetal power which governs and regulates all fugitive action. The beautiful checks and balances of a true commonwealth—of our own model republic—correspond, in effect, to those admirable heavenly adjustments which direct the motion of planetary bodies, and compel "Arcturus, Orion and Pleiades" to swing in harmony with the earth and her moon. Absolute authority, without independence, would arrest motion and paralyze system. Entire independence, without authority, would disrupt order and result in chaos. The instinct of individual independence is to fly off—the law of social government is to attract and restrain. Sir, when I liken the republic, with its checks and balances, to the harmony of the spheres, I would that I might conceive of it in likeness to that eternal Providence which reaches down through creation, from the whole to its parts, from the infinite to the atom, from the movement of a universe to the fall of a sparrow. Such a government may not be possible in our fallen estate, but the sad truth that it has never been emulated in our administrations, cannot weaken my faith in it as a model to which we may humbly aspire. I yearn for no Utopias. I contemplate no impossible Atlantis or Arcadia. I am content to accept nationalities as they exist, regarding each, be it large or small, as a political and social microcosm. I only ask that, as each human nationality is a type of the human mass, it may acknowledge its derivation of power from that mass; and that it jealously guard this power and confide it to subdivisions only as a sacred trust from the whole to its parts. So, I believe, we shall best maintain the faith of republicanism, by securing a government wherein the instinct of individualism is qualified and exalted through love of family, of kindred, of country, of race, of humanity; and where all authority, however vested, shall contribute to that perfect political equipoise which we understand by human equality before the law. How, then, in this obvious sovereignty of a whole nationality, like that of our whole American people, can you interpolate the sovereignty of a State or its irresponsible independence, or the independence of a city, however great may be its numerical strength? It is the entire nation, by its delegated power in Congress, which creates States out of territorial communities. It is the entire State which gives name, form, and power to municipalities. On what is based the authority of the United States, to declare the boundaries of

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new States, or to admit them to the nationality, or to dictate a republican form of government to them? On what, indeed, but the sovereignty of the whole people, which, in a delegated form, resides in Congress? Can a State divide itself into two States, or two States unite their territories, without sanction of the nation, expressed representatively by Congress? It is the sovereignty of the whole, not of parts, which must make valid any agreement to divide or unify the subordinate and delegated authority vested in those parts. Assert the unrestricted domain or dominion of a State, in itself, and you assent to the doctrine of rebellion, of secession, of war against the republic and the Constitution. Acknowledge, on the other hand, the supremacy of all the people of our national commonwealth, and you maintain the equality of every citizen, in every State, to all the rights and immunities enjoyed by every other citizen in every other State. Recognize the responsibility of all the people of our Union to secure republican government to the people of each State, and you, at the same time, affirm the responsibility of all the people of a State to secure republican government and social order to every county, city, town and village of the State. It is for the common weal that all government, whether supreme or subordinate, exists. It is for the public good that Constitutions, laws, charters, and every instrumentality of authority are framed in a republic. And because this whole public good is the supreme good, all authority and instrumentalities for conserving that public good must come down from the sovereign whole and be distributed through the subordinate parts. Constitutions and charters are merely documentary evidence of delegated power. They cannot alienate the responsibility of the people, they cannot abrogate the supremacy of the whole over its parts. Nominations, ballots, majorities, elections, are but the cogs and wheels of such political machinery—the simpler the better—as is necessary to the service of the *res publica*—the commonwealth. Despotisms, and autocracies, and oligarchies, and aristocracies, have circumscribed the limits of the common weal, but even these have made pretense of representing it. No tyrant, unless he were also a lunatic, like Nero, or a madman, like Russian Paul, could place himself above and beyond all responsibility to rule for the class which he represented. Conquerors, like Alexander and Tamerlane, have assumed to represent their soldiers, Cæsars their empires, the Egyptian his priesthoods, the Mongol his tribes, the Brahmin his caste, the aristocrat his order, the monarch of Europe his "grace of God," held, as he asserted for the good of his people. But what is this divine right of monarchs but a recognition of authority delegated by God through men? The princes who claimed to rule by the grace of God were right in their claim, but no more than the Cæsar who claimed to be *Pontifex Maximus* was right in his. The arrogant and blasphemous mistake that both kings and Cæsars make is, that they claim a direct vicegerency from the Eternal Sovereign, and deny that the people stand between them and the Deity. Rebellions, conspiracies, revolutions, civil wars, have, in all ages, protested against the arrogance of kingcraft; and the republic, wherever it exists, is the reclamation of popular sovereignty from the hands of its despoilers. I was pleased to hear, during a former debate, the gentleman from Richmond [Mr. Brooks], express his desire to pay proper respect to ancestral wisdom. I was glad to hear his quotation from Burke, that "to innovate is not always to reform." Sir, I will retrace the beaten ways of ancestry as far as he desires; I invite him to go back, if he will, to ages anterior to all innovations, and to witness, with me, the principle of human freedom and equality, asserted and made practical in the simple government of rude but robust tribes, in all ages and countries. I will show him that the earliest innovations were made by the spoilers and invaders of human equality; that the usurping forces of war and tyranny were the first real innovations upon the peaceful repose of patriarchal countries, or the democratic independence of tribal life, and that such innovations, whether incarnated by a Nimrod or a Saul, a Cecrops or a Romulus, have always encroached upon, always assailed, the natural equality which God ordained for his intelligent creatures. Talk to me of innovations, sir, and remind me of ancestral wisdom. I go back to the independent health of an aboriginal tribe, before the disease of kingcraft or classcraft has smitten it; I go back to a pastoral democracy, unimbruited by war, undemoralized by land owning, and I find the unwritten law of human equality recognized and obeyed. I seek for that law of human equality under a despotism and find it not. Despotism has innovated it out of existence. I explore an oligarchy for this law—it is not to be found. I look for the principle of human equality in an aristocracy—it is trampled under foot. I demand it of the pagan in his temple, of the heathen in his sacred grove. I demand it of modern democracy, which would create a pariah class in this representative republic—a class identified by the hue of its skin, and branded by the law of its native land as alien to equality, and unworthy of representation. Sir, I cannot discover the law of equality recognized by any of these innovating powers and forces. They ignore, they disdain, the kinship of humanity, they deny and contemn the oneness of manhood in God's image. Where, O disciple of Burke! shall I escape the innovating principle of despotism? Where shall I seek for the reclamation of human equality if I find it not in an enlightened civilization? Where shall I demand the recognition of manhood under God unless I claim it in a gospel-reading, Christian commonwealth? I ask, then, two essentials of republican society—first, the sovereignty of the whole people or republican unity delegated downward through whatever forms may be convenient; and, secondly, the equality of all persons and all classes of persons before the republican law. Do the representatives of democracy on this floor confront me with their dogmas of inferiority in this race or that? Does the learned gentleman from Kings [Mr. Murphy] assert that the Caffir, the Hottentot, the Ashantee, the Japanese, the pink-eyed Albino, the almond-eyed Chinaman, the stunted Esquimaux, the squalid Digger Indian, the

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blue-spotted Pinto, are all, more or less, inferior to Celt and Saxon in the scale of humanity, and therefore unfit to participate in the primary duties of citizenship? I answer, that all these representatives of races and families are souls in the sight of God, and men in the eye of law—portions of that great composite manhood to whose original types the Creator delegated authority on earth, placing every race and tribe, each with its nearest kin, to assimilate with that kin on the soil and under the sun of its nativity. If there has been any invasion or violation of the laws of race and soil, whereby Hottentots, Ashantees or Mongols appear to be displaced and transplanted, it is not God's innovation, but man's, which has accomplished the result. It is not the inferior human being who has infracted any law of nature which might seem to fix him on his native soil and under his native sun. It is we, who claim superiority of civilized and Christian development, who have plucked up the African or Asiatic plant and made it an exotic on the soil of America. Be these strangers within our gates inferior or not, the lot of their manhood is cast with us, and we must accept it and make the best of it. It is we, who arrogate superior extraction, who become responsible when we press onward the march of emigration, absorbing the birth-places of Indians and Esquimaux. The presence of the African on our soil is not his choice. Our presence on this continent is not the choice of its aboriginal remnant. The lot of our national manhood is cast with these races, I trust for wise and good purposes. Be, for good or ill, however, equality of manhood cannot be denied to them. I assert this, sir, as a republican—not merely in the party sense, but in the broadest meaning of the term. Republicanism is the government of the people for the common weal, for equality before the law. Democracy may be the government of the people for oppression of minorities and individuals. A democrat may be a despot, and opposed to equality before the law. A republican must be an advocate of equality before the law. Democracy may rule by a mob and by force. Republicans can only rule by representation and balances. Democracy may have its Helots and its chattel slaves. Republican government must be "of the people, by the people, and for the people," or it is no longer republican government. Hence, sir, I claim to be a republican; for while, as an integer of the nation, I acknowledge my subordination to the economy of the whole, I also assert the obligation of my nation to obey those radical human laws which existed anterior to nationalities, and which represent the goodness as they do the majesty of God. "*Homo sum! humani nihil a me alienum puto!*" I love my commonwealth, the noble State of New York. I revere our national republic—the limit of political sovereignty over me as a citizen. But I listen always to the universal heart-beat of my species, admonishing me to respect the manhood of all men and the consanguinity of all nations. Deriving sovereign authority from the universal people down through nationalities and their subdivisions, I come now to consider the assumed rights and privileges of cities. Nurtured with and outcropping from the heresy of reserved State rights, is the modern dogma of municipal sovereignty, which finds champions in this chamber, a dogma never met with in any national theory of government, ancient or modern. In the days of Enoch, the city builder, a town or city may, for aught I know, have claimed and exercised the authority of an imperial state. It is probable that such cities as Babylon or Tyre and Carthage, the mothers of colonies, were each a great center and source of government, and that Rome, in the plenitude of her power, as a city, claimed civic sovereignty, and regarded all communities and districts beyond her walls as mere provinces that could only be approximated to her, in a degree, by receipt from the Roman Senate of the name and franchises of *municipium*. So, likewise, Athens and the other Greek States, as well as the later municipal republics of Italy, were each a city, with outlying and dependent villages. But in no ancient or mediæval nationalities have cities ever been more than the capitals or centers of provinces. During the feudal ages they were sometimes the seats of episcopal dioceses, sometimes the appanages of royalty. Municipal strength grew up out of the efforts made by members of populous neighborhoods to defend themselves against the aggressions of predatory barons, by surrounding their dwellings with walls, and organizing armed forces to guard them. Afterward, during the struggles which arose between monarchs and their powerful vassals, the nobility, the former sought to enlist the devotion of citizens by conferring on their towns certain chartered privileges, held on the condition of service to the crown, and liable to be reclaimed at the pleasure of the sovereign. In no case did cities ever assert municipal independence, unless they claimed to be sovereign States, in addition to their municipal character; like the Republics of Italy or the free cities of Germany. Never, while acknowledging itself to be an integral part of a nationality, did any city presume—under any charter whatever—to dispute the original and ultimate sovereignty of the national power which chartered it. Never has the municipal status constituted, *per se*, a right of sovereignty or independence. What, then, is the province, what is the duty of the people of this commonwealth, the State of New York—occupying her place in the Federal Union? It is to represent, within her limits, the sovereign power of the nation; and as the national authority guarantees to her and to every State a republican form of government, so must she guarantee to every municipality and township, and to every citizen within her borders, a full equality before the law, and all charters, rights, and immunities necessary to that equality. It is the *res publica*, the common things of the people, which the State authority must defend and protect. It is the enjoyment of life, liberty, and the pursuit of happiness, that must be guaranteed to every human being in the State. And as the national authority is bound to interpose whenever a republican form of government may be jeopardized in any State, so, likewise, is the State authority bound to interfere whenever the rights of citizens may be threatened under any form or operation of local government in any town or city. Show me a State of the Union where a majority may oppress a minority, where class dis-

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tinctions shall be set up, where the republican form of government shall be abrogated or invaded, and I will show you the occasion for interposing the national and constitutional power, in order to conserve the republican form of a State. Show me, in like manner, a municipality where, through the schemes of demagogues, or corruptions in office, the equality of individuals before the law is overborne, the people oppressed by taxes, the public health endangered, the public security infringed, the public decency outraged, the public peace threatened, or the public morals contaminated, and I will show you the occasion where State or commonwealth authority is bound to interpose, and is necessitated to guarantee relief and reform to a suffering population. It is here that the *jura publica* surmounts all municipal rights or claims. It is here that the State resumes its full sovereignty, and reclaims whatever subordinate power it may have delegated by charter or law. It is here that the commonwealth re-enters upon original jurisdiction, and may redelegate the local government to officers of its own selection, charged with the duty of reforming abuses and redressing wrongs. This right of governmental re-entry is not to be disputed. It is a right inherent in the republican polity—a right never alienated except by expressed constitutional provision. It is, in effect, the sovereignty of the commonwealth over all its parts, for the good of each part and of the whole. What, indeed, is the pardoning power of the Executive, but a re-entry of the public sovereignty, through which the verdicts of juries and the judgments of courts are annulled and made void by the "higher law" of the people? What is the reading of the riot act, in case of civil disorder, but the announcement of an arbitrary authority resident in the whole body politic, and operative over the liberty and even the life of any member of that body politic who shall refuse to obey its mandates? What is the *posse comitatus* but a standing popular force, to be used in the name of the commonwealth, against every individual who shall oppose it? I ask, then, simply for a constitutional assertion of the right to re-entry by the people of this great State upon their original jurisdiction over whatever portion of the State is abandoned of official virtue, and abused by local misrule. I ask that the State proclaim her sovereignty over any municipality which may persist in denying good government to its citizens. I ask that power shall be constitutionally vested in your Legislature, by which it may, in spite of cavil or injunction, supervise the public good—that hands shall be bestowed upon it, by which it may stretch out the power of the people and reach whatever local abuse and whatever local wrong shall persist in aggrieving and injuring any local body politic. I ask that our legislators shall possess the means of access and influence upon local abuses, and thereafter be held responsible for their correction, to the people whose representatives they are. Do I ask more than a republican commonwealth ought to grant? Do I ask what is not needed? Do I ask before alarming evils cry out for a prompt and permanent remedy? I leave it for the Convention to decide. But, sir, in demanding a constitutional declaration of the paramount authority of the State, I deny no municipal privilege and oppose no legitimate charter or franchise. Our municipal system, founded as it is on the noble corner-stone of the old Saxon commonwealth, identified as it is by the checks and balances of true republicanism—cannot be bettered by modern theory. I cling to the American structure of village, of town, of county, of city, with their courts and councils, as to a perfected form of the ancient tithings, and hundreds and shires, with their juries, their gavel-kind, and their gemotes. I would not abate one jot of the delegated power wisely intrusted by the commonwealth to its smaller divisions, whether they be villages, towns, counties or cities. Nay, sir, I would confide much more local authority to counties and to towns, and relieve the State at large of over government. But I would provide that, howsoever we delegate and disperse the power of the whole people, it can at any time be reclaimed by the State, if abused or disputed by its local wielders in town, city or county. Hence, while I am content to clothe the *municipium* with all the State authority—granting it, in effect, by power of attorney—I desire to retain in the whole people a sovereign and summary right to revoke that power of attorney whenever it shall be used against the public good instead of for it. Mr. Chairman, it is from those who ask a constitutional grant of complete independence for the city of New York—an independence which for twenty years shall place her local authorities above the Legislature of the State—it is from these champions of municipal sovereignty that I demand satisfactory proof that the voting population of our great metropolis can be safely intrusted with self-government. I demand a guaranty, sir, that the commonwealth shall take no hurt by such a grant of permanent sovereignty, and that the equality of all citizens before the law shall not be jeopardized by it. Are the opponents of State jurisdiction, and the claimants of municipal independence prepared to give such guaranty? The past of New York city admonishes me to the contrary. Her future I will trust only as I trust a strong and mettled steed, whose beauty is my boast and whose strength I exult in, but who bears me best and most safely with my curb, however gentle, in the mouth, and my grasp, however light, upon the silken bridle.

The question was put on the substitute offered by Mr. Duganne, for the first section, and it was declared lost.

Mr. LANDON—I move to amend, and insert after the word "cities," in the first line, the words "whose population exceeds or shall exceed fifty thousand." It does not seem to me, Mr. Chairman, that this system is at all applicable to our small cities. I speak, however, only of the little city in which I live, and I think I speak the sentiments of the people of that city when I say that they much prefer the present system of government to the system which is proposed in this article. The present system, sir, is flexible, and we can come to the Legislature and get such amendments as experience suggests or necessity requires; and I can see no principle upon which this rule proposed here is to be made applicable to the small cities. Those cities differ only in

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name from large villages. They need no hard, iron rule by which they shall be governed, and I think they ought to be permitted in the future as they have been permitted in the past, to regulate their own domestic matters in such way as the Legislature may allow them to do.

The question was put on the amendment of Mr. Landon, and it was declared lost.

The question recurred on the amendment of Mr. Morris, to strike out all of the section after the word "office" in the ninth line.

Mr. ALVORD—As one of the Committee on Cities who have reported this article for the consideration of the Convention, and I beg leave at this time to take advantage of the privilege which I stated in acceding to the report, that I should take the liberty to except to certain portions of it. This is one of those portions. I am not in favor of restricting the mayor of any city to one term of office. I believe that if you get a good officer of that kind, one who performs his duties faithfully and acceptably to the people, he ought to be re-elected if the people desire.

Mr. E. BROOKS—The report which has been under consideration during the day, has received so many blows from its opponents that I ventured to hope it would not receive any from the members of the Committee on Cities, who concurred generally in the provisions of the report. Sir, the discussion which has taken place this morning and evening, reminds me of a good fruit tree which in the course of the season gets so stoned and thumped and beaten by the boys in pursuit of its fruit, that long before the fruit comes to maturity it is robbed of all that is palatable. This report has been assailed upon the right hand and upon the left, and now, before I take my seat, I wish to say a few words in its favor. The question was put to me privately, by the gentleman from Rensselaer [Mr. M. I. Townsend] this morning, whether I was not one of those gentlemen who in the Senate of this State voted for the police bill which passed in 1857, and I said to him very frankly that I was, and he, as promptly as the opportunity presented itself, communicated the fact to the Convention. Sir, it is very immaterial how I voted then, and perhaps it is quite as immaterial how I shall vote now. I do not belong to that class of persons, politicians or citizens, who live for ten or twelve years in the world without seeking some opportunity of doing better in the present than in the past, nor to that class who are not willing to learn something in the school of experience; in a word, sir, I am not one of the school of the Bourbons who never learn any thing and who never forget any thing.

"Old politicians chew on wisdom past
And totter on in blunders to the last."

I trust, sir, that I shall never be numbered among such a class as this. Now, Mr. Chairman, I did take a very active part in favor of the police bill which passed the Legislature in 1857. At that time I represented one of the largest senatorial districts of the State and of the city of New York, numbering, even then, nearly 300,000 people, and composing nearly three congressional districts. I was asked by a majority, as I thought, of my constituents, for reasons satisfactory to themselves, and at that time satisfactory to me, to favor the bill which was then introduced, and I did so; presenting at one time a memorial signed, as represented, by at least 12,000 people, a memorial so cumbersome that it literally enveloped the desk of the presiding officer, and almost hid him from public view. At that time there was very great excitement in the city of New York, in reference to the manner in which the city government was administered, and one of the largest meetings which I have ever known was held at the Broadway Tabernacle, where there was a petition signed by citizens almost irrespective of party, for a change in the administration in the city government, and in conformity with what I believed to be the wishes of my constituents, and the wishes of if not a majority, an approximation to it, of the people of the city at large, I took an active part in advocating the passage of that police bill which has been alluded to here by my friend from Rensselaer [Mr. M. I. Townsend]. Under like circumstances I should do the same thing again. Whenever I can have presented to me what is a better state of things than that which exists, or what promises to be such, then sir, trying always to be practical in my action, I will do what seems to me likely to accomplish the greatest good for the greatest number of the people. In that spirit I voted for the police bill. In the same spirit, after ten years observation of its operation under its various ramifications and amendments by the Legislature from that time to the present, I shall vote for the report introduced by my honorable friend from Albany [Mr. Harris]; and, as a citizen from the sea-board, I ask permission here to thank him for the very able, masterly and exhaustive argument with which he presented the subject to the Convention to-day. I desire, now, sir, as far as I am able, in the few moments of time which I mean to occupy, to strip the assaults made upon this report of all extraneous matter and to come directly to the issue presented by the report. The gentleman from Troy, who first spoke [Mr. Francis], endeavored, as I think, to excite the prejudices of the Convention against the report of the majority of the committee, by alluding to what he was pleased to say was the marked absence of those physical conflicts between persons, which formerly occurred in the metropolitan district, of which the city of New York is a part. He says that there are no pugilistic fights there now, and and that there had been none since the metropolitan police bill was made a law. Sir, I think my friend is mistaken in his facts. I think, indeed I know, there have been pugilistic encounters in that district since that bill became a law. But, supposing that he is entirely right in his conclusions, and that there is an absence of those conflicts between man and man, prize fighting, if you please, and all other similar encounters which are offensive to most gentlemen, what does it prove? Simply, sir, that these persons pass beyond the confines of the district, and go to those portions of the State where the State itself has more supreme control than it has in the metropolitan district. Now, this is a fact, and it is the only conclusion to be drawn from the argument of the gentleman. It was stated here over and over again, by the gentleman from Rens-

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selaer [Mr. Francis], that before this metropolitan police bill became the law of this capital district, a large number of burglaries were committed from time to time, and that there has been a decrease in the number of such crimes since that time. Well, sir, all that may be true. I am not here prepared to dispute its truth in regard to the capital district, for I know very little about the administration of authority here; but I do say, for the metropolitan district, in which I live, that there are as many crimes committed to-day, and I make an allowance for the increase of population, as were ever committed before the police bill became a law; and no gentleman who is cognizant of the crimes committed in that city from day to day will doubt the truth of the assertion. I will add, sir, and I am very sorry to have to add, that in my judgment the demoralization of the people never before in the history of our government, reached a point equal to that which it has reached during the two or three years past, and this remark applies as well to the rural districts as to the city of New York, or the counties of Kings, Queens, Westchester, and Richmond, which are embraced in the metropolitan district. Sir, I object to the appeals which have been made against this proposed measure—appeals to men's passions and not to their judgments, such, for example, as bringing up various isolated cases of crimes in the city of Troy and elsewhere. I do not believe, sir, that such arguments become a subject of so much magnitude and importance as the one under consideration, allusions, for example, to garroters, to pugilists, and highway robberies, in order to prejudice and direct our action here. It was said, also, sir, by the gentleman from Troy [Mr. M. I. Townsend], in order to excite the feelings and prejudices of members of this Convention against the city of New York, and against the chairman of the Committee on Cities, that at the commencement of the war, the then mayor of the city, Mr. Wood, was guilty of attempting to convey certain amounts of army goods then on board ship in the harbor of New York, to the State of Georgia; these goods, he might have added, having been purchased and paid for before the beginning of the war. Well, sir, I believe what he stated of the fact is substantially true; and if the case were left just there it might perhaps tell effectively against the proper administration of justice in the city of New York, considering that we were then upon the eve of a civil war, but in his party zeal the gentleman forgot to carry the matter to its conclusion. He forgot to say that under the administration of a governor of this State [Governor Morgan] that was done which Fernando Wood, the then mayor of the city of New York, was not permitted to do. The goods referred to were sent to the State of Georgia; so that under the republican authority of the State, which was appealed to upon the occasion, the very offense was committed which the gentleman is pleased to charge upon the mayor of the city of New York. This, sir, is my recollection of the transaction, and I think I am not mistaken. And now let me say, with more justice to the Governor of the State than the gentleman displayed toward the mayor of the city, that at that same time there were vessels laden with cargoes of cotton bound to New York, held at the port of Savannah, and that Governor Brown of Georgia, and Governor Morgan of New York, compromised the difficulty by acquiescence, or by correspondence, I forget which, by allowing the vessels to pass each way to their respective destinations. Sir, I believe that is about the history of this transaction, and as it is always important to get at the truth, it is well to carry facts to all their conclusions, instead of leaving the facts half stated. The gentleman from Rensselaer [Mr. M. I. Townsend] has also said, in this Convention—and I consider it a very harsh, if not a very unparliamentary remark—that "of necessity, democrats could not vote their convictions." Sir, what right had the gentleman to say this? (and I regret very much his absence upon the present occasion.) What right had he to say of any member of this Convention that he could not vote his convictions? Why not vote according to our convictions as well as the gentleman according to his? Who gave him authority to speak for any other member of this Convention in the discharge of a solemn duty, assumed under the Constitution of the State, and under the law by which we are convened here to-night? For one, I intend to vote my convictions in voting for the report under consideration, and I give to all other members the expression of my sincere belief that they, too, will vote their convictions, whether they vote for or against the report, or for or against any provision in it. Now, sir, in regard to some of the more important provisions of the report, and the discussion upon it which has transpired here to-day, I do not think that gentlemen have treated the report with fairness. It was stated by the first gentleman who spoke against it that we were proposing to make the mayor of the city of New York a king, as it were; to clothe him with royal power, and to give him, in that city, all the authority which is exercised by the king upon his throne. Sir, we do no such thing. We clothe the mayor with precisely the power which this report clothes him in. We make provision that he shall be elected by the people of the city. We say that the great money power of the metropolis shall be in other hands than those of the mayor. We make provision for the election of the higher branch of the local Legislature, upon a general ticket, by the people at large, and we make provision, also, for the election of the board of assistant aldermen by the people of the respective wards. What resemblance is there between the powers conferred by an article like this, and the authority exercised by a king? What resemblance is there between those powers, to even the authority exercised by the Governor of the State? All that this article does, all that it contemplates, is to give to the mayor of the city of New York and the mayors of other cities, powers under its provisions which shall continue for three years; and in order that the mayor may not use his authority during his first three years to secure his re-election, he is made ineligible for a second term. It was also said by the gentleman from Troy that it was professed to make the cities of New York and Brooklyn independent of the State, and in order to excite

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still further the prejudices of the Convention against this report he went on to say that we proposed to carry our local governments back to those dark days of the middle ages, far back even almost to the time of the feudal systems. And he made reference to the free cities of Germany. Sir, it is true that about six hundred years ago there was a combination of German cities, some eighty or eighty-five in number, leagued together mainly for commercial purposes and to carry on commerce with those islands in the Baltic and with the commercial towns and countries in more distant lands—it is true, I say, sir, that for commercial purposes these cities did form leagues and combinations with one another. But, sir, there is no more resemblance between the local governments of these Hanseatic towns and the government of the city of New York and other cities in the State, as proposed to be regulated by the article before us, than there is between light and darkness. Take the city of Hamburg, or the city of Lubec or of Bremen for examples. The city of Hamburg is one of the most enlightened of the three. It is a free city, with a free flag and an almost independent government, and one of its laws is that no Jew (and there are ten thousand of them in that city) shall hold office or even be regarded as a citizen. They can pay taxes, but nothing more. The same is true of the city of Bremen. I say, therefore, that it is unjust to attempt to excite prejudices against an article like this by making such comparisons. Why, in some of these cities strangers cannot even hold real property or follow any civil profession. We have, thank Heaven, no such restrictions in this State or in the United States. Now, sir, I did not like to hear my friend who introduced this report to the committee [Mr. Harris] make the allusions he did to the city of New York. I have no doubt that a great majority of the members of this Convention look upon the city of New York as a sort of pandemonium. The very illustration used by my friend from Troy, made here to-night, that the chairman of the committee, perchance, could hardly go along the streets of New York to attend some religious anniversary without being knocked down by persons holding political or official relations with some one in authority, shows to what strange and extreme means gentlemen from other parts of the State will sometimes resort in order to excite prejudice against the city. My friend spoke of the city of New York as a "lower deep." Sir, that city is undeserving of any such abuse, and inasmuch as gentlemen upon one side have seen fit to draw these dark and dismal pictures of the city of New York, let me, in a few brief sentences, show the Convention another picture of city life and manners, and one which presents it in an aspect in which, as gentlemen know, I have taken considerable interest. Sir, I will put the light of the city against all their darkness, and, subtracting the one from the other, I am ready, after stating the result, to appeal even to the prejudices of gentlemen in this Convention to acknowledge at least that a great many good things can come out of Nazareth. The institutions for public charities in the city of New York alone (I mean public charities supported by the city, and for which the State contributes nothing) number some twenty-seven, and during the last year they relieved 81,592 people, besides 38,928 of the "out-door" poor, at an expenditure for this alone of $983,845.74. Sir, this is one of the items of local expenditure which contributed to the twenty-two millions to which allusion has been made. Before I take my seat I will demonstrate to this Convention that of the twenty-two millions and upward of expenditure in that city, a very large sum is the product of this police bill and of the other commissions that have been created by the Legislature of the State. But passing from public to private charities, let me also mention a single society in the city of New York, the society for the improvement of the condition of the poor, which in twenty-three years has relieved 58,579 people, at an expense of $958,271; of which not a dollar was contributed by the city or the State. There are also in the city of New York some fifteen hospitals, and there is one in course of erection which will cost nearly a million and a half of dollars. Another is soon to be erected from the noble generosity of the late Mr. Roosevelt of that city, which, though it may not cost so much money, will be one of the grandest institutions in the Empire State, or in the country. There are also some eleven dispensaries for giving medical attendance to the sick poor, and the oldest of these dispensaries, during the past seventy-seven years, has aided 1,311,000 people; often 39,000 or 40,000 a year, and all the fruit of private contributions. There are also in the city of New York eight orphan and half orphan asylums, where shelter, comfort and instruction are provided for the poor. There are twelve industrial mission schools; there are forty benevolent societies; there are one hundred and twelve organizations for the circulation of religious information; there are fifty organizations of masons and sons of temperance, secret but benevolent in their character; there are fifty trades associations for benevolent purposes; special endowments were made in one year to the extent of $2,500,000, while the private benevolences in this much abused city have amounted to more than a million and a half of dollars. In 1834 there were but twenty-five of these private charities in the city. In 1867 they numbered three hundred. Sir, I put these plain facts against all the assaults which have been made here upon the city of New York, and which are reiterated so currently and so commonly that I am not surprised that they find such general credence among the people of the State beyond the city. Now, Mr. Chairman, in reply to some questions that have been put here, I may ask what virtue is there in a local commission over properly constituted city authorities, as provided for by this article—over, for example, such a mayor as the present mayor of New York, who has been recently re-elected by the people against combinations of his own party, and in spite of the united opposition of the large and powerful party opposed to him in that city? Why may not a commission be just as partisan as a mayor? Why, sir, they are, certainly, with exceptions, but these exceptions are as numerous upon the one side as upon the other. The gen-

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tleman from Rensselaer [Mr. M. I. Townsend] has had to conceal as best he might, the fact that the police commission in the city of New York to-day is controlled by commissioners not at all in sympathy with the people of that city. He has said that prospectively this commission may be politically equal. Sir, why should it ever have been otherwise than equal, if there was a disposition to fairness on the part of the appointing power, or upon the part of those controlling the commission? Now, sir, upon another subject. We all know the political character of the city of New York. It was very well perhaps in a personal view to conceal the fact that the commissions complained of are not of the same character as the people of the city. But I maintain, that the majority of the police commission in the city of New York, and the gentlemen who are at the head of it are in the largest sense party men. I mean to say in direct terms, and to defy contradiction in what I say, that when two men present themselves as candidates for appointment to the position of patrolmen, one a republican and the other a democrat, in a majority of cases, notwithstanding the immense democratic majority in the city of New York, patrolmen are selected from those not in sympathy with the people of the city. Such, at least, is my information. We have one commission, I believe, created by the mayor and common council. To show its practical results (and I mean the commission of the Croton aqueduct board) I will say here that it is as well administered as any commission created by the State government. This is one of the few things in the administration of the affairs of the city of New York from which the people have received a large interest on the original expense of the work done, and amounting to between nine and ten millions of dollars, for this great public improvement. I do not know why all commissions cannot be like this one, and I do not think any gentleman has any reason to affirm that if a commission should be created by the mayor of the city of New York and the common council, or by the former alone, it would not be of the same character as the one in charge of the Croton aqueduct. It is said, and no doubt truly, that the police system before 1857 was greatly abused. Well, sir, the abuse of a thing is no argument against the use of it. As it was, it was capable of the same remedial improvements that we have seen in regard to the present police system. Now, sir, what has the Legislature done in the past, (I certainly shall speak with all respect for the Legislature) in reference to the administration of authority in the city of New York? It has, as was said by the gentleman from Albany [Mr. Harris] increased our local expenses from eight millions to over twenty-two millions of dollars, which is an increase altogether out of proportion to the increase of population. The temptation for an increase of expenditures, when there is a divided authority, is so obvious, that no gentleman, it seems to me, can deny the evil effects of so much divided power. I wish to add, in this connection, and I appeal to the gentleman from Ontario [Mr. Folger] and to the other side, if what I say is not true, that there is not a county in this State from which would not come the most solemn protest against the same interference by the State in its affairs by the Legislature, as the Legislature has from time to time made in the city of New York and the city of Brooklyn. Every man must feel this, and if a like thing were attempted in either branch of the Legislature, one loud, solemn, earnest protest would come up to the Legislature against any such action affecting the country districts of the State. Well, sir, the city of New York has to bear its proportion of all the expenses of the State. In the year 1867 you required of it a direct tax for the Champlain canal, and a direct tax, also, for the extension of the Chenango canal, and a third direct tax for canals generally. You took from the treasury of New York the sum of four hundred and fifty thousand dollars for the support of the common schools of the State beyond the city boundaries; and yet when it becomes a matter of political government (I will not allude to what may be the motives for this action, but I state the fact), when it becomes a matter of authority for the administration of justice, with the power of equal justice in some hands, in this abused city, you feel at liberty to appeal to the Legislature of the State, in order that you may control the entire administration of its local affairs. Under this rigid law you have made some nine or ten commissions for that city. But, says one, a gentleman from New York, these commissioners, these Central Park commissioners, for example, and the commissioners of emigration, for another example, do not receive any compensation for their services. So much the worse for them, and perhaps so much the worse for the State. The commissioners of emigration for the last twenty years have received as head money for the emigrants who have arrived at the port of New York, the sum of five millions of dollars, and all the patronage incidental to that immense sum is a great deal more than any salary which you could bestow upon the men holding the office. They all have a large local patronage; they all have great power and yet they are born of the State and not the locality where they exist. You also direct a taxation on the local trade, in the form of auction duties, and it has amounted in times past to the sum of seven or eight million dollars in the city of New York. I do not intend to enter into any argument whether it is a State tax proper, or whether it is a local tax. All I mean to say is that it is a tax imposed upon that locality, and that the effect of it is in a measure to diminish the trade of the city. I will add, however, that when the auction duty tax was imposed upon the business of the city of New York, the intention and the declaration of the State was that when the Erie canal was completed—I mean in its smaller proportions—that that tax was to cease. Well, sir, in spite of all that has been said to the contrary by the gentleman from Rensselaer [Mr. M. I. Townsend], I contend that taxation without representation, in a republican government, is entirely at war with the principles of the government. Sir, to what end do you read in the Constitution of this State, "We, the people of the State of New York." This is the corner stone of the government under which we live. To what end did

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the fathers put into the preamble of the Federal Constitution these words: "We, the people of the United States, in order to form a more perfect union, establish justice, promote the general welfare, and provide for the common defense, do ordain and establish this Constitution?" Why, sir, every man feels and knows, who either lives under a republican government or has an innate sense of what a republican government is, that the supreme source of all political power is in the people. The people of the federal government act, as prescribed by the Constitution, for federal purpose; the people of the State, through like agencies, for State purposes, and the people of municipalities for municipal purposes. Sir, the distinction which has been drawn here—the wire drawn distinction—between the absence of the power of the people in the exercise of authority because they happen to live in one locality and not another, seems to me, with all respect to the gentleman who advanced the opposite argument, perfectly absurd. Again, sir, the people of Kings county and the people of the city of New York hold relations to the State authorities not to be disturbed by any such article as the one now under consideration. They have State relations for State purposes; they perform State duties, and federal duties. And then, what is left, relates to towns, counties, cities, and municipalities. They administer, or should administer, their own institutions, and are responsible to the powers that elect them for the manner in which their duties are discharged. Now, sir, I wish to say a few words—and I mean to talk plainly upon this subject—in regard to what has been said as to mob governments, and the allusion made over and over and over again in this Convention, from June last, about the "mob government" in the city of New York. As a gentleman doing business in the city of New York, and a resident there for thirty years, I feel pained, as every other citizen of the city must, a deep mortification at every excess and crime which may be committed in the community where I live. I do not wish to disguise any thing. Neither, sir, am I to sit quietly by and hear gentlemen make the remarks they do from time to time in regard to the excesses that exist, without entering my solemn protest against it. New York is not peculiar in regard to occasional excesses, such as have been alluded to here—such as, if you please, disgraced the metropolis of our State during the memorable three days of July, 1863. But, upon the authority of a gentleman in official place who was present when that mob commenced, I declare from him and for him, as an observer of what transpired, that there was not a visible member of the police guard of the city within sight or sound of the voices of those who commenced that riot in July, 1863. I have said once, and I will repeat it now, that one-third of the police of New York were cognizant—must have been cognizant—of what was to transpire; the knowledge which was brought home to every man's heart and house on Saturday and Sunday previous to the riot of Monday and with a proper organization of police at the various head-quarters where the draft was to begin, that bloody riot might have been prevented, the lives saved which were lost, and the million and a half of dollars saved which it has cost the city of New York to pay for the excesses of those three days of riot and of blood. Paint the picture as dark as you please, the repeated assertion that the city of New York is a commonwealth where negroes were taken to the lamp posts and hung, as if such was the practice of the city; paint it in all the colors you may, and yet, Mr. Chairman, there have been other excesses committed in other parts of the State and all over the Union almost equal to the riot in the city of New York, and without some of its provocations. Mr. Chairman, you remember, perhaps, the famous riot in the city of Philadelphia—the city of brotherly love, so called—which lasted for ten days, during six of which, up Chestnut and down Market street, through all the high ways and by-ways of that large city, the mob was the supreme master of the place, and there was no authority there efficient enough until the expiration of that time, and until the mob had literally exhausted itself, no power to arrest its mastery and control of the city. Sir, perhaps you will remember a mob in the city of Syracuse, in the State of New York also—I mean the Jerry rescue mob, where an attempt was made to overthrow the law of the federal government, and even the sovereign law of the State. And, sir, I have heard gentlemen in excited public assemblies, yet not as excited as my friend from Rensselaer [Mr. M. I. Townsend], defend that transaction. I have even heard a defense made of it in the Senate of the United States and in the other branch of Congress. Sir, I remember two great mobs in the literary Athens of America—the city of Boston—where William Lloyd Garrison had to go to jail to save himself from the violent attacks of an excited and irritated people of that city, albeit without cause for irritation or excitement. And I remember the Burns mob in the city of Boston, where it became necessary to call out the military of the general government, and when Burns was borne off to the vessel which took him to the city of Savannah between armed men, artilery and infantry going down from Court street, through State street, and thence sent to Georgia. Why, sir, mobs have been more common in other cities of the Union than they have been in the city of New York—far more common—let me add—and I will add further, Mr. Chairman, that with a residence in the city of New York of thirty years and more there is not a commonwealth anywhere which for its flexibility to law—to use the word of my friend, [Mr. Hardenburgh] is so much under the control of moral and legal restraint, and of general order as the people of the city of New York. Why, Mr. Chairman, long before we had a metropolitan police, I remember when the recorder of the city of New York headed a few men at the time of the Astor Place riot, and compelled those there to disperse, giving them, first, what every mob ought to receive, a proper warning, and then the next proper thing, an order to fire into the midst of those who failed to obey the law, and chose to insist upon personal violence in the place of law. Sir, I remember mobs also in the city of Providence, mobs in Baltimore, mobs everywhere. Mobs, indeed, I

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admit, are quite too common; but they are not confined to any locality. At the commencement of the war to which allusion has been made, there was assembled in front of the New York *Express* office, in Park Row, from five to six thousand people demanding that the flag of the United States should be raised over that office. Sir, who composed that mob? It was made up of vagabonds and pickpockets, all crying out for loyalty, and yet in twenty minutes after they had dispersed some ten gentlemen had lost their watches and as many more had lost their pocket books. This, sir, is the general inspiration of a mob. But I remember even a more serious case in the city of New York, which took place under the excitement of the war when two democratic journals were closed up by military authority, the New York *World* and the New York *Journal of Commerce*, for publishing the celebrated forged proclamation, of which they were as innocent as you or I. The author of that forgery was a former attache of the New York *Tribune* and the New York *Times*, and these journals escaped all punishment, or, at least, the *Tribune* and *Times* were permitted to be published while the democratic journals were stopped. Sir, this is the history of the past, and since gentlemen have thought proper to discuss the matter of mobs I think it is but fair to hear both sides of the question. But, Mr. Chairman, I did not intend to be drawn as far away in the discussion as I have been to-night. I hope the report which is submitted by the majority of this committee will be adopted. I believe it will result in a great public good. I confess frankly that I am not without some misgivings that the concentration of so much power in the mayor, and if you please, the common council, will be abused. I believe it will be difficult to make a local government wholly satisfactory, even if all this power should be restored to them; but let us try, and the grand motive is that all the attempts which have been made to improve upon the past, have made things rather worse than before. I say, also, that our expenditures increase, and must increase so long as the affairs which pertain peculiarly to the city of New York are administered upon by the State at large. Let me give a single fact in illustration of what I mean. The local legislature of the city of New York, consisting of a board of aldermen and a board of councilmen, are accustomed and required by law, to prepare during every session of the Legislature, to submit to it, what is called "the tax levy." Well, sir, it is as full as a nut of meat by the time it gets to the Senate and Assembly. Every appeal is first made to the local authorities to put in every item of appropriation, and I have known the tax levy thus composed by the common council and presented to the State Legislature, to have two million dollars added to it by the Legislature. What cares the State at large what New York pays for taxes? What can they know of the merits of these respective local appropriations? Why, only in 1866 the police appropriation was increased between four and five hundred thousand dollars for the police, and was increased by a proposition made in the State Legislature to add so much per head to each person serving on the police. The salaries which are fixed upon New York are made by the Legislature, or by boards created by the Legislature, very often considerably enlarged by interested parties, and, sir, in conclusion, I appeal to the judgment and common sense of the members representing the interior districts of the State, to know, if indeed it is possible for them to know the wants and necessities of the people of the city of New York in regard to streets, in regard to charities, in regard to the fire department, which is pre-eminently local, and in regard to any thing of this character, as well as the people themselves? Obviously it is not. Obviously, also, it is impossible for the State to administer any local government as wisely in regard to these local affairs as the people of the cities themselves.

Mr. OPDYKE—I desire to say a few words this evening in reference to the pending question, but as it is now getting late, and I am suffering from illness, if no other gentleman desires to speak, I move that the committee do now rise and report progress, and ask leave to sit again.

The question was put on the motion of Mr. Opdyke to rise and report progress, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT *pro tem.*, Mr. FOLGER, resumed the chair in Convention.

Mr. RUMSEY, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on Cities, had made some progress therein, but not having gone through therewith, had instructed their chairman to report that fact to the Convention, and ask leave to sit again.

The question was put on granting leave to sit again, and it was declared carried.

Mr. BERGEN—I move that we now adjourn.

The question was put on the motion of Mr. Bergen, and it was declared carried.

So the Convention adjourned.

THURSDAY, January 23, 1868.

The Convention met, pursuant to adjournment, at ten o'clock A.M.

No clergyman present.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. COLAHAN presented three memorials signed by medical men in Chautauqua, Niagara, and Steuben counties, asking for a uniform system of licensure of medical practitioners, and the establishment of proper pharmaceutical regulations, as proposed by the resolution presented by him.

Which was laid on the table at his request.

Mr. COLAHAN presented the following preamble and resolution from citizens of Oneida county;

"WHEREAS, In the proposed constitutional amendment presented by the Hon. S. J. Colahan, with a view to the advancement of medical science by elevating the standard of medical requirements, we recognize an instrumentality of great practical importance; therefore,

"*Resolved*, That we hereby respectfully request

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the members of the Constitutional Convention to support said measure, and favor its adoption in the form of an amendment to the Constitution of the State."

Which was laid on the table at his request.

Mr. HAND presented four memorials from physicians and others in the counties of Steuben, Madison, Washington and Fulton, asking for a uniform system of licensure of medical practitioners, and the establishment of proper pharmaceutical regulations, as proposed by the resolution presented by Mr. Colahan.

Which was laid on the table at his request.

Mr. C. L. ALLEN offered the following resolution:

Resolved, That the Committee of Revision be instructed to strike out the word "sixty," in line twenty-one, section 18 of the article on the judiciary, and insert instead thereof the word "forty."

Mr. C. L. ALLEN—In my absence from the Convention, a day or two last week, I observe that the language in the original report of the committee on the subject has been amended by substituting the word "sixty" instead of "forty." The committee had reported that in counties where the population amounted to forty thousand the Legislature might, as it might under the Constitution of 1846, appoint an officer as surrogate to attend to the duties of that office in those counties. There was nothing compulsory in it, and there is nothing compulsory in it now. I believe that my own county, with a population of forty or fifty thousand, are in favor of retaining the article as it is in the present Constitution. I know, sir, that even now, with the limited jurisdiction of the county courts, the limited jurisdiction of the county judge in our county, it is almost impossible for him to do the duties of county judge and surrogate in the county. And it is so in the adjacent counties—in Clinton, for instance, with whose members I have talked; and as long as it is not compulsory I believe the wishes of the county will be better consulted if we leave it as it was in the Constitution of 1846; and especially now that we propose to increase the jurisdiction and powers of the county courts so much greater will be their duties, and so much greater will be the impossibility of their performing the duties of both offices. I ask unanimous consent to the consideration of the resolution at the present time.

Mr. ALVORD—I do not desire to debate the question, but I will suggest to the gentleman that this was referred by special resolution to the Committee on the Judiciary.

Mr. C. L. ALLEN—I will amend by substituting "Committee on the Judiciary."

Mr. FOLGER rising to debate the resolution, it was laid on the table under the rule.

Mr. BICKFORD offered the following resolution:

Resolved, That the Committee of Revision be instructed to add at the end of the article on future amendments and revision of the Constitution in substance as follows:

"But no new Constitution or amendment agreed to by such Convention shall be valid until adopted by a vote of the majority of the electors of the State voting on the question of its adoption either at a general election or at a special election, as shall be determined by the Convention.

Mr. RUMSEY rising to debate the resolution, it was laid on the table under the rule.

Mr. COLAHAN—I wish to call up the resolution offered by me yesterday, in relation to a system of licensure.

The SECRETARY proceeded to read the resolution as follows:

Resolved, That there be a special committee of three appointed to consider and report to this Convention a system of licensure of medical practitioners, and the establishment of proper pharmaceutical regulations in this State.

Mr. COLAHAN—I hope that this Convention will see the importance of adopting this resolution. The measures that have been heretofore presented to the Convention in relation to raising the standard of, and protecting the medical profession in this State have met with almost universal approbation. Memorials have been presented here from more than thirty counties of the State, signed by some of the most prominent and respectable members of the medical profession, and many of our prominent citizens and representative men, asking that this Convention take action on the subject. I have also in my possession, and I believe that other members of the Convention have in their possession, several additional memorials from like sources, asking for similar action. Many leading journals in the State have considered this subject favorably. Several medical societies have adopted resolutions asking from this Convention early action in the premises. It is not a subject that belongs solely to the Legislature. It is one sufficiently vast in its features to command the earnest attention of this Convention. If it is passed by as a subject of legislation, then this Convention occupies a sorry position in setting up such an answer to the demands of our people. This Convention has done too much legislation already, and has established too many precedents, to try at this late day to shuffle off the responsibility with such an excuse. We cannot intrust it with safety or hope to the Legislature, because from the Legislature we can expect no satisfactory reformation, for the reason that those influences that have worked so injuriously and potently in the past will continue to operate injuriously in the future. School will be arrayed against school; fights will be made for the ascendency; and while these evils are progressing, the people will know little how their power of life is being shortened by the short sightedness of our State in not providing effective remedies. I trust the resolution will be passed.

Mr. HAND—I hope the Convention will grant this committee. It will certainly do no harm. There are many reasons why the Legislature does not act upon this subject, and it becomes necessary to act here. Unfortunately, there are various parties in medicine. The plan proposed is not in favor of any party, or any system of medicine. It proposes to require of every man who would practice medicine, a profession which is certainly of very great consequence to the community, a degree of knowledge which will enable him to practice it with safety to the community.

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We have spent many days of the time of the Convention in organizing our judiciary system; but no one pretends that it is of more importance to the community than the system of medicine, which comes home to every household in the land, and yet that question seems to be regarded as a thing to be neglected. We desire that every man who practices medicine should be educated for the performance of those duties, and that the State should see to it that this is enforced. We do not ask that they should follow any particular system of medicine, but that they should make themselves acquainted with the elementary sciences lying at the foundation of all medical practice, that they should have a knowledge of surgery, a knowledge of the nature of disease, a knowledge of the nature of the medicines which they are to use, and their relations to the diseases which affect the human system. All this is important, in order that the physician should be a thoroughly capable man in his profession, and this is what the community requires. No particular system of the treatment of disease is to be required, but a knowledge of the elementary branches of medical science, and other branches of knowledge pertaining thereto, in order that a higher degree of intelligence in the profession shall be secured. There are reasons why the Legislature will refuse to act upon this subject, as they have done heretofore. It is the partisanship of different schools in medicine that has prevented its action, and the provision, year after year, has been lost in the Legislature. There is now hardly a county or a locality in the State where there has not been professional murder, the destruction of human life, from the ignorance of practitioners, abortionists and others, by whose acts their patients have been brought to an untimely grave. I have myself attended *post mortem* examinations developing a treatment, the enormity of which no one could doubt. The unwritten histories of such deeds of crime fill our communities everywhere. I think it is due to the interests of the State that a plan should be devised and placed in the fundamental law which will put an end to such criminal malpractice. I trust that members of the Convention will agree to the resolution, and that a committee will be raised.

The question was put on the resolution offered by Mr. Colahan, and it was declared carried.

The PRESIDENT announced the following gentlemen to constitute the committee called for by the resolution just passed: Messrs. Colahan, Hand and Gould.

The Convention then resolved itself into Committee of the Whole on the report of the Committee on Cities, Mr. RUMSEY, of Steuben, in the chair.

The CHAIRMAN stated the pending question to be on the amendment offered by the gentleman from Putnam [Mr. Morris], prohibiting the mayor from two consecutive elections.

Mr. OPDYKE—The Convention has referred to this Committee of the Whole, four distinct reports from the Committee on Cities. First, the report of the majority, signed by the chairman; second, a minority report, signed by the gentleman from Kings [Mr. Murphy]; third, another minority report, signed by the gentleman from Rensselaer [Mr. Francis]; and, fourth, still another minority report, signed by Mr. Hand, Mr. Fullerton, and myself. The report of the majority proposes to confer on cities absolute powers of self-government, and to take from the Legislature all power of interference with their local affairs, other than to pass general laws to carry out the principles embodied in the article they present. The minority report of the gentleman from Kings [Mr. Murphy] concurs in the main with the views expressed by the majority, differing, however, in two important points; one as to the time of holding elections, and the other as to the absolute executive power it proposes to confer on mayors. The action, however, which he proposes is quite different from that proposed by the majority. The minority report presented by the gentleman from Rensselaer [Mr. Francis] takes a position directly opposed to that of the majority. It goes to the other extreme and proposes to leave with the Legislature all power over the government of cities. The report signed by my associates and myself, presents a plan for the government of cities which may be regarded as a mean between these two extremes. It proposes to confer on cities powers of local self-government, so far as experience and the circumstances connected with them seem to render it safe, proper and useful to do so. The distinguished chairman of the committee favored us yesterday, with an elaborate argument in support of the proposition of the majority. He was followed by the gentleman from Rensselaer [Mr. Francis], with an equally earnest and elaborate argument in support of his proposition, which, as I have said, is diametrically opposite to that of the majority. My associates and myself, when we presented our report, accompanied it with a written argument in its support, brief, but carefully considered, and I had intended to rely on that in support of our proposition, but, inasmuch as the other reports have been accompanied by oral arguments in their support, I feel it my duty to state, as succinctly and clearly as I can without preparation, the reasons which persuade me that the article we have presented is the one that this Convention should adopt. Sir, our aim in this matter, as in all other questions that come before us, should be to secure good government. In truth, we are sent here to exercise whatever ability we possess to devise a plan, a fundamental law, which will secure to the people of this State, both in their aggregate capacity and in their local civil divisions, good government, in every department. The government of cities is confessedly the most difficult problem with which we have to deal. It is known that now, as in all past time, the population of large cities contains an element less enlightened, more vicious, more insubordinate, and more difficult to bring into co-operation in the support of order and law, than is to be found in other portions of the community. But, sir, I feel that if we divest ourselves of all prejudices, and look solely to the high duty devolving on us here, we shall be able, through careful deliberation, to devise a plan that will secure to cities much better government than they now enjoy. Having

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done this, if we shall then have the moral courage to act up to our convictions, relying upon the good sense of the people, as I am sure we safely may, for the indorsement of our plans, I feel that even in regard to cities we may make a change that will be productive of great good. The great question then is, Mr. Chairman, what plan will best secure to the cities of this State the boon of good government. In looking at this question as Americans, educated in a political atmosphere where popular government is regarded as the only proper government—where we live, move and breathe in that atmosphere, our minds instinctively turn to the expedient, so eloquently enforced by the chairman of the committee yesterday, of conferring on cities the right of local self-government. That is in accordance with the theory of our government. It is, in fact, the very essence of the principle on which our whole system of government is founded; and I hold that it is carried out in the Constitution of the United States absolutely, so far as that instrument is concerned. The government of the United States is prohibited from all interference with local interests. The principle is less perfectly carried out in our State Constitutions, but I hold that we shall act wisely in giving to localities, as far as circumstances will admit, all the power that prudence and safety will justify; for it is self-evident that any community, whether large or small, will manage their own affairs with better knowledge and more vigilance than others will do it for them. The smaller the community, the more certain they are to govern themselves wisely. I believe that the towns in this State, the smallest political division known, as far as population is concerned, are, as far as their local interests are concerned, better governed, more wisely, more economically, more justly, than any larger political division of the United States. Now, sir, let us apply this principle to the government of cities, or, rather, to the government of the metropolis, for it is in relation to that that I shall chiefly confine my remarks. It is there that the question is of deepest interest and we there find a type of all the other cities of the State with all its proportions magnified. Consequently, whatever will apply to that city, whatever may be safely given, whatever prudence requires should be withheld, will apply equally, with some modifications, to all the cities of the State. The metropolis is intimately connected with every part of the State by at least one of its interests, and in a large degree by two others. I refer first to commerce. It is known that the city of New York is the center of commerce, not only of this State but of the United States. It is known that commerce, through its interchanges of property and blending of interests, binds the whole community together by a chain of interdependence. Consequently, whatever will affect the commerce of the city of New York must affect the commercial interests of the whole State. It is clearly proper, therefore, that that interest, whatever we may do with others, should be left absolutely and entirely under State control. It is one of its prerogatives that it would be unsafe to take away. There is another interest, not so important, not so intimately connected with the interior, but still sufficiently so to dictate the propriety—nay, the necessity—of leaving that under the control of the State. I refer to the sanitary interests of the city. We know that many diseases to which humanity is subject are infectious, and others contagious; that through the constant intercourse of the people of the State with the metropolis the virus of disease which may be located there may be carried by railroads—yea, on the wings of the wind—to every portion of the State. Especially in the immediate surroundings of the city these means of propagating disease are more intimate than they are in more distant parts of the State; and therefore it is absolutely essential to the safety of the metropolis itself, since diseases may be brought to it as well as carried from it, that its sanitary authority should extend to its surroundings, and if need be to the whole State. Therefore I hold that that is another interest, in one sense local, but in another co-extensive with the State, which the public good demands should be left under the absolute control of the State government. The next is the interest of the preservation of law and order, which is enforced by means of a police force. While this interest cannot be said to extend so absolutely over the whole State as the other to which I have referred, yet it is known that the duty of arresting offenders cannot be properly performed unless that force extends beyond the boundaries of the metropolis. Finding that defect in the old system, the State has created, as the chairman of the committee told us yesterday, in violation of the Constitution—so strong the necessity—has created a metropolitan police district. Every citizen of New York, I am sure, will agree with me, that the result of that enlargement of the district has been most beneficial to the city of New York Therefore, whatever the present Constitution may authorize, whether it inhibit or permit it, I hold it would be exceedingly unwise in this Convention to deprive the State of that power. Again, I hold that it would be manifestly unsafe, so far as the interests of the city itself are concerned, to go back to the system which that police department superseded. Every one who has lived in the city of New York long enough to be familiar with the police department which preceded the present, to have observed its workings and results, and who has observed the workings and results of this force, I am sure will agree with me, that the improvement has been in all respects most marked. In every sense the present force is superior to that which preceded it. In fact, sir, I believe the present police force of the city of New York, whatever criticisms may be made upon it from any quarter, will compare favorably with any police force in the United States, or even in Europe. I will refer particularly to its fidelity, its courage and its endurance, in the riots of 1863. My friend from Richmond [Mr. E. Brooks] last evening told us that, in his opinion, if that force had been properly handled—if its action had been as prompt, as earnest and energetic as it should have been, that riot might have been much earlier suppressed, and much of the loss of life and property might have been avoided. I am constrained to differ entirely with my friend on that point. It was my official duty

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to assist in efforts to suppress that riot. I was in constant communication with the police board; and I feel bound to say—and, in evidence of my sincerity, I may remark that although a majority of the commissioners are of the same party as myself, I have never received their political support, yet I have pleasure in saying that their conduct and that of the force under them, throughout that trying period was most faithful, and in all respects praiseworthy. I think there was not a moment that it was possible for that force or those who controlled it to do aught in suppression of the riot but what was done with energy, with earnestness and with fidelity. And it is largely due to the efforts of that force, thus handled, that a riot, the most formidable and disgraceful of any with which our country has ever been cursed, was suppressed with such a slender loss of life and property.

Mr. S. TOWNSEND—Will the gentleman allow me to interrupt him. He says a "slender loss of life and property." What does he estimate that loss of life to have been? A thousand or more?

Mr. OPDYKE—No one that I have ever met has been able to give an accurate estimate of the loss of life during that riot. The best information that I have been able to obtain puts it at something less than one thousand lives as the total loss on both sides. But when we consider that that riot was of a *quasi*-political character, that it received more or ess sympathy from a large portion of the members of the dominant party in the city; when we consider, also, the vast numbers engaged in the riot, and the blood-thirsty actions of which they were guilty, in seizing men as innocent as angels of any offense against them, men who had in no manner shared in ordering the draft which the rioters made the pretext of their acts—seizing them, hanging them to lamp posts, or taking their lives by cruel tortures that would disgrace a savage, for no other offense than the color of their skin; when we found them aggregated in masses of thousands and tens of thousands, patrolling the streets, threatening murder, arson, destruction on all sides; when we consider, in addition, that all the force that the military and civil authorities, by the most diligent efforts, could obtain to aid the police up to twelve o'clock of the first night of the riot, numbered less than one thousand, a large proportion of whom could not be relied upon for fidelity from their sympathy with the rioters; when we consider all these things, and find that within three days the riot was suppressed, order in a great measure restored, and, I repeat, with but little sacrifice of life and property; and when we consider that the police force, in the absence of the State National Guard, had to bear the brunt of the battle during the first two days, I feel that they are entitled to all the commendation that I can give them. My friend from Richmond [Mr. E. Brooks], in the remarks he made last evening, slurred over that riot as being a matter of not much moment, and one that had been equaled in magnitude and atrocity by many other riots in our country. From what I have said, I think the committee will agree with me that his remarks did not give it the prominence that its malignant and infamous character demands. I feel that when the historian comes to make a record of those dark days, in the history of the city of New York, he will have to be deeply imbued with the spirit of Christian charity before he can pass over them as lightly as my friend from Richmond [Mr. E. Brooks] has done. The majority report now under consideration proposes to give mayors of cities absolute, unlimited, executive power, the power both of appointing and removing all subordinate executive officers without the advice or consent of any other body. The gentleman from Kings [Mr. Murphy] in his minority report, very properly characterizes this as novel and dangerous. I was surprised to hear my friend from Albany [Mr. Harris] the chairman of the Committee on Cities, declare yesterday that this was only conforming to this department of the government of the United States; that the power which he thus proposed to confer on mayors was no more than that conferred on the President of the United States. It seems to me that the gentleman must have become strangely oblivious of the facts in the case, or he could not have made that declaration. It is well known that the power of removing subordinates is the only power the President of the United States has ever possessed absolutely; the power of appointing has always required the concurrence of the Senate of the United States; and now, under the existing laws, both the power of appointment and of removal require that consent. The proposition of the majority of the committee is to confer on mayors the absolute power both of appointing and removing, without the concurrence of any one. Suppose the President of the United States to-day had the power which the chairman of the committee declared he possesses; that he has the power of appointing and removing all other executive officers—what do you think would be the present condition of things in the position of antagonism and angry discord existing between the President and the Congress of the United States? I feel, for one, that the peace of our country would be in great jeopardy. What will be the effect of conferring this power on mayors of cities? It embraces there the appointment and removal at will of the police force. I will look simply at that. The mayor will have the power of appointing the head of the police force and the power of removing him; consequently there will follow with that power the power of dictating the appointment of the rank and file of the force. We can readily imagine that if the commissioners should fail to comply with the wishes of the mayor in that regard they would be promptly removed and more pliable material put in their places. We should have then, under the proposition of the majority of the committee, a police force to arrest offenders which would be likely very soon to degenerate into the personal or political body-guard of the mayor. They would be an instrument to execute his will, and we might reasonably expect that in times of political excitement they would be liable to be wielded in a direction repugnant to public sentiment and contrary to the public good, and that riots, disorders and bloodshed would be likely to ensue. Nothing, in my judgment, could be more fatal to the order, peace and

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good government of the metropolis than a proposition like this. I trust that on this point, whatever we may do on others, the Convention will not hesitate an instant to reject the proposition. My own experience has satisfied me that it is important that the chief executive officer of the city should possess more power than is conferred by the present charter; but the most that I hold it would be safe to do, under the plan of city government proposed by the majority report, would be to confer on him, as was formerly conferred on the President of the United States, the right of removal; and even then I would only give him a lease of official life for one, or, at the utmost, two years. The majority report proposes three. It proposes to clothe him with executive powers altogether unlimited, and to keep him in office for three years. Why, he could wield a patronage almost twice as large as that of the Governor of this State, and if a bad man, he could wield it in the direction of perpetuating his own power. True, the committee propose to prevent his re-election for the ensuing term, but it is known that there are offices in the United States higher than that of mayor of any of our cities, and consequently he would be likely to use it either to elect his successor or to elevate himself to a higher office in some other department of government. It would not be likely to be exerted in the direction of the public good. If the Convention shall decide to give to cities increased powers of local government, I trust it will determine to restrict the power of mayors as I have suggested, and that it will reserve to the State the right of absolute control over the police force and over commercial and sanitary interests. The question next arises, will it be safe, prudent and beneficial to confer on cities the right of self-government so far as relates to all their other local interests?

Mr. VERPLANCK—Will the gentleman allow me to ask him a question? In looking at the report of the minority of the committee I see that the same ground is taken which the gentleman now takes. Am I mistaken in supposing that in the discussion of the committee of which I had the honor to be a member, the gentleman did not approve of conferring this power on the mayor? I ask whether I am mistaken in supposing we had the concurrence of the gentleman?

Mr. M. I. TOWNSEND—I rise to a point of order. I understand that it is not in order to refer to the discussions before the committees appointed before this house.

The CHAIRMAN—The point of order is well taken.

Mr. OPDYKE—I will answer with great pleasure.

Mr. VERPLANCK—I ask pardon of the committee and the gentleman if the inquiry I made is improper.

Mr. OPDYKE—I shall be very happy to respond to the question of the gentleman. It is true we had discussions in the committee—

Mr. M. I. TOWNSEND—I rise to a point of order. It is not in order for the gentleman to relate what has occurred in the committee of which he was a member.

The CHAIRMAN—The point of order is well taken.

Mr. OPDYKE—I will ask whether it be not in order for me to state what I have done elsewhere, whether in committee or any where else.

The CHAIRMAN—It is undoubtedly in order for the gentleman to state what he has done elsewhere, but not what he has done in the committee.

Mr. OPDYKE—Then I will say that it has always been my opinion, since I have had experience in that department of municipal government, that mayors should have larger executive powers than are now conferred on them. I have advocated that, and I have advocated giving to mayors of the city of New York the power of appointment and removal, provided other things were made satisfactory, and provided that they be elected for a single year. That is all. I stand by that proposition still; but that of the majority is a very different proposition, and one which I have always opposed, whether in committee or elsewhere—the proposition to confer on mayors the absolute power of removal and appointment of their subordinates, and to hold office for a term of three years. I believe now, and have always believed and have always so declared, that it would be unsafe. I have not, in any regard, changed my views. When I was interrupted I was about to consider the question whether it would be safe, proper and useful, to confer on the metropolis, and on other cities, the absolute power of self-government over all local interests except those which I have endeavored to show should be excluded, for the reason that they affect the interests of the whole State. While it would be as unbecoming in me as it is foreign to my nature to say a single word in unjust disparagement of the community in which I live, a community which has conferred on me the highest office in its gift, yet I am here in the performance of duty to declare my convictions, truthfully, whatever they may be. In the first place, I join in all that my friend from Richmond [Mr. E. Brooks] has said in commendation of New York and the active benevolence of its citizens. I desire to say more—I desire to say that during the rebellion, while at least two-thirds of the voters of that city were politically opposed to the administration then in power, and that was conducting the war; while two-thirds belonged to that party which had been for many years in alliance with the party at the South which inaugurated the rebellion, yet I am proud to say, that that party, in spite of political ties and party prejudices, stood up manfully and earnestly in support of the government of the United States. There were, it is true, during the long struggle, periods when their political animosities led them into attitudes so unfriendly to the government that I sometimes feared they might eventuate in open antagonism to the war; but I am happy to say that that result never occurred. The only thing that approached it was, as I said before, this offshoot which ripened into a formidable riot. It may be proper to say that those concerned in that riot belonged almost wholly to the party opposed to the administration; and that the government of the city of New York during all that period, was mainly under the control of officials of that party. But it is due to them to say, that in every emergency, in every crisis, when there were calls to

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sustain the government, I always received the hearty co-operation of the democratic officials. But, sir, the vital question is whether we, in the city of New York, with the present extension of the elective franchise, are capable of giving to ourselves good local government. For one I am constrained to say that my observation and my experience have led me to the conclusion that it would be unsafe to make the experiment by constitutional provision. I fear that, instead of producing better government there, it would precipitate us from bad to worse, until the government became intolerable. I ground that conviction on the character of our population. It is known that more than three-fifths of our voters are of foreign birth. It is known that New York is the receptacle of much of ignorance and vice from all quarters of the world. Most immigrants of all classes, land there, and the worst portion of them remain there; and in due time they become voters. Add these to similar classes of the native born, which always abound in large commercial cities, and it gives them a preponderance in the present voting element of that city. With the present extension of the franchise, I feel that we cannot hope for the election of faithful and efficient officers so as to give us a good, economical and efficient government. The plan proposed by my associates and myself for overcoming that difficulty, so that the metropolis may have the benefit of local self-government, and its citizens the right of managing their own local interests in their own way, and to do it well through the election of capable and faithful officials, is to limit the franchise in regard to the election of a portion of the local officers. The proposition in our report is that the board of aldermen shall be elected by tax paying voters, possessing property to the value of at least one thousand dollars; that the Comptroller shall be elected by the same constituency; and that the board of assistant aldermen and the mayor shall be elected by the whole body of electors. This, it will be seen, will give a mixed government; a government in a part of which the whole body of electors will be represented, and in the other part only tax paying electors. They will serve as a check upon each other. If either class of officials should attempt to do that which was wrong or injurious to the interests of the city, the other would be prepared to hold them in check until the people would apply the proper corrective through the ballot box. The objection that will be urged against this proposition, is that it is contrary to the sentiment of the present day to have any limitation of the elective franchise, and especially one that is thus grounded. I am one of the last that would propose a property qualification for voters in matters purely political, where personal rights are concerned; but it is well known that municipal government relates mainly to the supervision and regulation of property. In regard to that, tax payers are most competent. Their acquisition and preservation of property proves that they possess proper qualifications, not only for voting for city officials, but even for acting in such official capacity themselves. I feel that the sentiment of the times is going quite too far on the extension of the elective franchise, and that it becomes us, when we consider that we are sent here to so revise the organic law as to secure good government, to be guided solely by our convictions as to the best means of securing that end. Now, if it were any wrong to the State or the city to deprive men of the right of voting for municipal officials because they do not possess property; if it violated any right of the citizens thus excluded; if it were an act of wrong toward them or of injury to them, I would be the last one to advocate it. But I hold, with a distinguished member of the Convention not now present, I refer to Judge Paige, that the right of voting is a franchise, and that it is the duty of the people, in the exercise of their sovereignty, to confer it where it is useful, and withhold it where it is injurious: and if we look broadly at the question we will see that this has always been our policy. To-day, not more than one-fifth of the whole community possess it. It is withheld not only from minors and women, but it is withheld from adult males wherever the public good seems to demand it. It is withheld, for example, from the foreign born who have been here less than five years, from those who have come from another State and been here less than twelve months, and from colored men without a freehold. No matter what the reason may be, if the public good will be promoted by withholding it, I hold that it is our duty to do it. For one, I am fully satisfied that if we want good government in the city of New York, that is the only means by which we can get it. I am persuaded that a majority of this body must concur in that conviction; and I should like to see the Convention face the question boldly. I feel as confidently as I can of any future event, that if we adopt the proposed limitation, the people will with alacrity endorse it. One of my associates on the committee [Mr. Law] from the city of New York, has frequently expressed the opinion that if that question were submitted to the electors of the metropolis alone, it would be as likely to receive a majority as a minority of the votes there. I could scarcely agree with him in so large an estimate; but I am satisfied that the aggregate vote in its favor there would be but little less than one-half of the whole. Now, if such would be the result in the city itself, what would be the result in the State at large? I am satisfied that the people would unhesitatingly indorse the proposition, and I think that in doing so they would be acting wisely, for I am convinced that it is the only possible means by which we can get good government in that city. If these safeguards, and the limitations to which I here refer be not adopted, then, for one, I shall feel constrained to vote against every proposed increase of governmental power to cities. I feel that the best interests of both the city and the State would then demand this action at our hands. True, the present government of the metropolis is as disjointed and as expensive as it seems possible to make it, consisting of not less than eight or ten administrative departments, each of which acts independently, gathering around it the paraphernalia of an administration almost as expensive as the whole would be if concentrated in a single head. Jealousies and antagonisms grow up. There is no unity of purpose or of

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action. One portion of the government emanates from the people of the city; other portions in the form of commissions, from the people of the State, through the action of the Legislature. All these things considered, we cannot, under the present order of things, hope for economical or good government in that city. Now, sir, what has produced this condition of things? Sir, it was produced by the fact that when the whole of the administrative departments of the city were in the hands of officials chosen by the electors of the city, it was found that the taxes for local purposes were rapidly augmenting, and the efficiency of the local government as rapidly diminishing. The citizens naturally looked to the Legislature for relief. The Legislature responded by creating these State commissions of which we have heard so much, and, for one, I am prepared to say that I think they have proved beneficial. Thus far they have been administered with general fidelity and good judgment, and if we look back at the administration of the corresponding departments of the city government, which some of them superseded, we must admit that there has been a marked improvement. But it is only an improvement. We cannot hope to have our government what it should be, and what it may be if our action here is wise, by any such discordant system as now obtains. I am opposed to legislative interference with our local interests because it is generally special and invidious, and often injurious. We do not always get good legislation from Albany, any more than we do from the City Hall in New York; and allow me to add, we do not always get justice from the representatives of the interior. I observed many years ago, when in the Legislature myself, and have often observed it since, that there is a want of sympathy, a want of desire on the part of many of our friends in the interior, to so legislate as to benefit the city of New York. On what that feeling is founded I do not pretend to say, but that it exists I feel certain. For one, I am most anxious that we should be left in the city to control our own affairs in our own way, if you will only give us a plan that will enable us to do it well. That plan I think is to be found in the minority article I have commended to the favor of this committee. But unless we can have the safeguards and limitations therein proposed I shall be constrained to vote to continue things as they are. But give us those, and what will be the result? We shall have, in my opinion, a local city government elevated in character, pure, efficient, looking to the best interests of the city, exercising due economy, with a single head, compact, symmetrical in all its parts, ready at all times to carry out the will of the people in all that relates to the general interests of the city, with a salutary restraint existing in a board of aldermen elected by tax payers, in regard to matters involving expenditure and taxation. This is the kind of government we need in the metropolis. I respectfully ask the committee's careful attention to the plan I have commended as likely to secure it, and also their support of it so far as their judgments approve.

Mr. S. TOWNSEND—I am opposed to the amendment offered by the gentleman from Putnam [Mr. Morris]. I think the trouble, the excitement, and perhaps the danger of going through an electioneering canvass for a new man to fill the responsible position of mayor of the metropolis of the State is a matter to be well considered before we approve of this amendment. Certainly, if we could have again a Havermeyer, an Allen, a Paulding, or to go back still further, a Coleman —or better still, a De Witt Clinton—for mayor of the city of New York, it would be a matter of regret that any constitutional provision should exist which would prevent his continuing in office for more than one term. Some remarks have fallen from the gentleman from New York last up [Mr. Opdyke] with reference to the circumstances of the great riot in New York (which was undoubtedly a portion of the rebellion), wherein he differed from my colleague from Richmond [Mr. E. Brooks] in his statement last evening that there was good authority for supposing that had efficiency on the part of the police existed in the elementary stages of that riot, or indeed at its outbreak, it would never have gone to the extent and degree to which it did go, and which we have all reason to lament. One duty of the police, as we have gathered from that institution in foreign countries (for it is only of recent years that the inquisitorial features of the police system have existed in this country)—one purpose of the police force, I say, and a very salutary purpose, is by a system of espionage, so to speak, to anticipate and guard against dangers that are likely to occur. Now, sir, when that draft was proceeding in New York on that eventful Saturday, and when men were seen reading from the list of names to see who of themselves or their friends were to be called to the front, those who were in the city on that occasion (for I had myself occasion to be absent at that time) tell me that it was evident that there was danger brewing, and that precautionary measures were necessary; and when the first outbreak took place at the provost-marshal's station in the upper part of the city I am satisfied that a decided demonstration of physical force on the part of the police, which, under the telegraphic system, then as now in existence, could easily have been concentrated there, would have destroyed the movement in its incipiency. It must be considered, sir, that in addition to the portion of the militia of the State of New York that had not gone to the front, there was also a very considerable United States force in the city ready to be associated on call with the militia and the police. I think that when the calm, deliberate history of the events of those riotous days is written, it will be found that there was a defect in the preliminary arrangements, claimed to be perfect in advance, by the provost marshal, but for which the riot would never have gone so far, or produced the deplorable results which we all regret, and which the police in the end exhibited a most admirable efficiency in suppressing. Now, sir, to give some little idea of how riots were formerly dealt with in the city of New York, if the committee will bear with me, I will detail some facts that occurred many years ago when I was a boy, too young, of course, to take part otherwise than sympathetically, with the disturbances that were going on. As long ago, indeed, as the year 1809—in the case

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of the riot known as that of Augusta street, when De Witt Clinton honored the station of mayor, I have been told, and in fact it is a matter of record that one of the marshals of the city came to that mayor and said, "Sir, I cannot execute this warrant of arrest, there is a turbulent mob that resists me, and resists the police force." But what did the mayor say, sir, on that occasion? He said, "Bring me my staff of office, call a carriage, and drive me to the spot." It was done, sir, and then, with the insignia of office in his hand, he marched through the crowd, dragged the chief culprit with him, placed him in the carriage, and brought him to the City Hall. That is the way, sir, that that great man administered the duties of his office in such trying circumstances. Now, I was sorry to hear gentlemen say that cities contained an especially insubordinate population. Sir, these cases of insubordination and turbulence are not confined to the cities of the State. Do we forget that the treasury of our State has had to pay hundreds of thousands of dollars in order to suppress insurrections that took place almost within the sound of my voice. I do not forget that in 1840 when the first appropriation was made, I had the privilege, by the favor of the constituency of the city of New York, of a vote upon that question, and in opposing the appropriation of forty thousand dollars of the funds of the State, to defray the expense of what was then called, and known as the "Helderberg War," I took occasion to say (and I have the best authority for it, the authority of a gentleman who was with the *posse comitatus*, and who has since filled the position of mayor of the city of Albany), the sheriff of Albany was then a gentleman of my own profession, a quiet, kindly man, but not fitted for such an emergency; that had that sheriff exhibited such efficiency on that occasion as De Witt Clinton had exhibited in New York on the occasion to which I have already alluded, there would have been no necessity for calling in the military of this city, or the militia of the State of New York, there would have been no necessity for that excitement, or for that expenditure; and therefore I proposed on the floor of the House, that the expenses of putting down that insurrection should be assessed on the citizens of the county of Albany, because they had not taken care to elect to such a responsible office as high sheriff of the county, a suitable man. We know too, sir, the excitements that have occurred in other places and on other occasions in this State, outside the city of New York. If the committee will excuse me again for a moment for detaining them, I will say sir, that it was my lot to take an active part, many years ago, in suppressing the celebrated riots of the days now a matter of history, the election riots of 1834. At that time I had the honor to be in command of a company of artillery in the city of New York, doing duty as infantry. We found no difficulty there, sir, though long before the metropolitan police system, and when the watchmen in the city were much fewer in proportion to the population than the police are now—and I may remark, sir, that those watchmen were known by the sobriquet of "leatherheads," from a massive ribbed leather cap worn by them, whose principal duty was done in the night, but done openly, not covertly, at that time sir, when they were the only police force of the city, except a few constables, we found no difficulty in suppressing the riot. Owing to the weakness of the police force of the city on the emergency of that riot, resort was properly had to the military. The arsenal was attacked, the arms of the city were in danger, and a gentleman who has now gone to his long home was seen climbing over the arsenal wall, leading an attempt to take possession of the arms. In that emergency the mayor very properly and naturally called upon the military. We repaired to the spot promptly and succeeded in quelling the disturbance, and although we were compelled to do duty all night, there was no bloodshed. Again, sir, another disturbance, more important, perhaps, in the history of these matters, because it was connected with one of the movements which led to all our great national troubles, was what has since been known as the "abolition riot." It occurred in the month of June, and was incited, it is said, by a statement being made in a press of that day still extant, a press which always likes to deal in excitements and sensations, that the two brothers Tappan had carried matters so far in the little chapel in Chatham street, at a period just following the annual anniversaries, that they had dovetailed black and white in together like the keys of a piano-forte, which I believe was the expression used, those persons making up the audience who chose to go and listen to some erratic Thompson or Garrison of that day. This report was seized upon, in part perhaps by some honest individuals, and also by the population that undoubtedly exists in all cities—the population that love on a moonlight night in the summer time to have an excitement [laughter], and it led to a breach of the peace. I myself saw, sir, a fearful attack made upon one of these "leather-heads" by the mob, and I recollect distinctly hearing the sound of the clubs beating upon the barrier that was fortunately presented between them and his skull. I remember of seeing four or five rough looking fellows attacking this one man, and all I could do was to alarm his confederates at the station-house as I passed home. The gentleman who was mayor of the city at that time, drawing his theories on that subject principally from a friendly sect who do not believe in carrying or using arms, hesitated about putting in requisition that force which an earlier mayor had used on the occasion I have already mentioned; the consequence was, that the disturbance continued for two days, without loss of blood, however, but resulting in the destruction of one of the minor churches of the colored population of the city, and it was not until the third day that energetic means were resorted to and the riot was thoroughly suppressed. I had the honor to participate in restoring and preserving the peace on that occasion, and I will mention a little incident which comes to my recollection at this moment. I remember a man saying to me: "What right have you to block up the streets in this way?" I stepped up to him and said: "Sir, you appear to be a man of intelligence; there is my authority (exhibiting the mayor's proclamation), and if you don't leave the ground in five

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minutes, I will put you in the guard-house"—the guard-house being the lecture room in the church in Spring street, sir, an illustration of how even the holiest instruments may sometimes be perfectly diverted from their original purposes. [Laughter.] Again, sir, that same mayor being still in office, the more serious, and, if possible, the more dangerous riot of 1836, or 1837, I forget which, occurred—what is known in the annals of the State as the "flour riot." I remember sitting in my office on a cold winter afternoon, and one of my clerks coming in and saying that a large mob was just proceeding down Pearl street and up Maiden Lane, with the intention of going to H——'s flour stores. I hastily put on my coat and ran over in order to be early on the spot—for I think that is the great point in such matters, not to delay, sir, to be early on the spot, and nip the matter in its incipiency as it were—I ran across the town to the vicinity of Courtlandt and Washington streets. The mob had just come there a few moments before from the park, and to the depth of three or four inches the whole street was strewn with flour, and some of the poor people were busy appropriating it and putting it in their baskets. The mayor of the city was almost immediately on the spot, arrayed in his blue cloak, a garment ill adapted for such an occasion, as was afterward illustrated. There appeared to be no malice in the mob, which was chiefly made up of Dutch women and boys, their only desire seeming to be to get snugly in their baskets the flour. The mayor stood upon one of the instruments which we use in our mercantile business, known as "skids" and declared to the mob that he was mayor of the city, and ordered them to disperse. While he was making these brief ejaculations, some fellow struck the skid that he was standing on and doused him into the bed of flour. I thought, sir, that was a very apt time for me to make a suggestion, and I said to the mayor, "Sir, your duty is to call out the proper force, call out the military at once; you know the signal that will bring them here; you know that seven taps of the City Hall bell will bring the force at once"—there being at that time but six fire districts in the city. The mayor walked rapidly to the City Hall. We found his office filled with men who ought to have been at the scene of the disturbance, but who had rushed to the City Hall to make suggestions. Before the mayor had taken his coat off, some hasty, but doubtless well intentioned person said to him, "Sir, give us an order to go to the arsenal." Fortunately, there was a voice to suggest, "No, Mr. Mayor, you have the authority, issue your order regularly, and it will be responded to at once." It was done, the bell struck, and in less than an hour the force was ready, and I was one of those who, in military array, and with loaded arms, went to the scene of the riot. We found no one there, sir; but we remained on the ground a considerable time, and thence proceeded to other quarters, and my comrades and myself during that night, contributed to and secured the entire preservation of the peace in that city, on that threatening, severe winter night. I excuse myself for this seeming digression, because I have mentioned these things in order to illustrate the position which my colleague has endeavored to maintain, and which I think he has maintained satisfactorily, that the power to suppress riots in the city of New York dates farther back than the time of the organization of the metropolitan police force. To digress again for a moment. I remember that when the question of uniforming the police came up, one of the best captains in the force said to me, "Do you suppose that we will ever consent to wear uniforms, badges about the city?" My reply was, "What better are you than myself or any other of the numerous merchants of New York who have often walked about the city in their regimentals? I remember, sir," I continued, "when I was a boy, as far back as 1824, when I had the honor of presenting arms to General Lafayette, leaving my boarding-house regularly to attend the meetings of the military company to which I belonged, and often followed by a squad of curious urchins, and shall you, sir, a paid servant of the city, claim an exemption which I did not claim? No, sir; you will have to submit to it." And they did submit to it as a matter of course. Now, since that time we have made many improvements (although I do not know that we have improved much in military matters, but of course that is a matter for military men to say) improvements of various kinds, mechanical and otherwise, tending to facilitate the rapid concentration of the military of the city as an aid to the police in keeping the peace or suppressing a disturbance. I believe my colleague alluded last night to the Macready riot, as one in which the efficiency of the then recorder of New York was manifested; but I think the "Dead Rabbit" riot in front of the Tombs was one which well illustrated the efficiency of the police force of New York, although it occurred long before the excitement of the war, and while our police system could not possibly have attained all the efficiency that it has at the present day. I do not believe, sir, that any danger to the peace and good order of New York will be encountered by returning to the system that existed there at that time, or by giving to that city, and to all the cities in the State, the right of self-government, to which they are certainly entitled. I took occasion to say here, the other day, that I think our great error is in attempting to govern too much. It is best, sir, to keep the management and direction of these local affairs as close as possible to the hearth-stone, the neighborhood, the village, the city, the town, the county. Concede to the State its rightful powers, and to the cities and towns and counties throughout the State their legitimate powers. The right to decide questions arising between counties, and the control of the courts that adjudicate upon great cases, especially cases of crime, belong to the State; but local matters should be left to the localities, where they properly belong. One of the gentlemen who spoke on the other side of this question took occasion to ring some changes on that old threadbare theme, the exceptional delinquencies of our foreign population. We are too apt, sir, to forget that we owe much of what we are and all that we possess in this country, as a nationality, to the assistance of foreigners. We should never forget

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those noble foreigners who aided us in our revolutionary struggle—Montgomery, Kosciusko, De Kalb, Steuben, who first organized the military system of this State, and perhaps of the United States, and General La Fayette, of whom I spoke a few moments ago. Then, coming down to later times, let me ask gentlemen where we would have been had our foreign population hesitated to help to fill the ranks of our armies? It certainly cannot be disputed that in New York and other States they did their full share in that respect. I remember saying during our war, when looking at some regiment made up of foreigners going to the front, "I am always happy, under any great misfortune, to see some alleviating feature, and I think that even this miserable rebellion will be the occasion of one good result—it will cement us together so that hereafter we shall be one common people with a common bond of union, and we shall nevermore hear of 'native American.'" That was my hope, sir; but it seems that I was too sanguine, and that old prejudices are still alive or are sought to be revived even in this body. Now, I desire to express here my most decided dissent from the idea which we have put forward here in one of the minority reports on this article, and which I have more than once before seen cropping out in this body, that in some way or other a property qualification for voters would be the grand remedy for all our evils of local government in the cities. If it were proposed to fix a qualification upon education or good conduct, and it were possible to engraft it practically upon our system, I should at least hesitate before I would refuse to vote for it; but to this other idea I can never give my assent. I belong to a profession the members of which are perhaps more liable than most other men to experience the vicissitudes of fortune. Twenty-seven years ago, speaking in this city and almost within sound of my voice here, I ventured to state as my opinion that, taking a wide range of years, ninety out of every one hundred men who enter upon mercantile life falter or fall under its burdens. We had not the telegraph then to transmit news as it is transmitted now, and I recollect that the report of my remarks reached New York somewhat in this form: "A pretty representative you merchants have sent to Albany, a man who says that ninety out of a hundred merchants fall into insolvency." The statement I had made was used to some extent by certain persons to bring me into disfavor, until a gentleman of research in Boston said that my statement was not at all in excess of the fact, and that from his investigations he had ascertained that ninety-seven per cent of those who entered upon mercantile life failed; so that I was fully confirmed; and I recollect saying upon seeing the gentleman's statement that if I had come to the conclusion that so large a proportion of the merchants failed I should have said every one, and had done with it. But I was afterward very happy to declare in the Convention of 1846 (which declaration will be found in the debates) that I was satisfied, from the modifications and improvements that had been made in reference to the banking, revenue and warehousing laws, and in other ways, requiring a less use of credit and giving greater facilities for small men to avail themselves of the importation of goods, that the proportion of failures had been greatly reduced, and that I then thought that not over fifty per cent fell into insolvency within the period of twenty years of active commercial life. However, the calamities brought upon us by the rebellion have carried the figures back to about the former rate; and within the brief period of fifteen months following the outbreak of the war, the names of eight thousand of the merchants of New York passed from the solvent list. Now, if you carry out this suggestion of making the right of suffrage depend upon a property qualification, how will it affect this class of merchants? An intelligent and conscientious merchant presents himself to exercise his right of franchise, and is asked, "Have you the required two hundred or five hundred dollars' worth of property?" He answers, "Unfortunately not, sir, if I pay my debts," and he is turned away, while the next man, a shyster or shoddyist, and another perhaps who has become bankrupt and has paid his debts by the aid of the law, is admitted to vote. Why, sir, a single instance of that kind occurring under such a provision would make every gentleman here regret that he had ever given countenance to this attempt to make a property qualification necessary for voters.

The question was put on the motion of Mr. Morris, to strike out the latter part of the first section, and it was declared lost.

Mr. SPENCER—As near as I can understand, there is a question relating to this whole article, whether it shall be incorporated in the Constitution or left out entirely; and with a view of having that question submitted distinctly, I move to strike out the section which has just been under consideration; trusting that, whatever may be the result of the motion, it will have the same effect as a motion to strike out the enacting clause of a bill. This general question I do not propose to discuss. It has been discussed very fully already; but I desire to say a word in regard to the remarks of the gentleman from Richmond [Mr. E. Brooks], made yesterday, by way of accounting for the change that has come over his views, in regard to the manner of governing the State of New York. It so happened that I had the honor to be a member of the lower house of the Legislature in 1857, and was then, as I am now, strongly attached to the republican party which was then just coming into existence. The proposition for a police commission was in fact, a party measure, and yet I hesitated to indorse it as a party measure; indeed I declined to vote for it when it was presented to the House. But sir, my observation and my information of the operation of the commission since that time has been such, that, if I were now a member of the Legislature, and the proposition were made to discontinue the commission, I should vote in favor of its continuance; for the reason that, so far as my information extends (and the position which I then took upon the question has induced me to give it a greater degree of attention than I have given to any other subject connected with the government of the city of New York,) my observation and my information in regard to its operation have satisfied me, that, there has never before been in that city a

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police system which has operated so efficiently as the system which was adopted by that Legislature.

Mr. ALVORD—Before the question is taken upon this motion, I desire to say a few words, not intending, however, to go through now with the whole argument which I expect to make upon this subject, but feeling that it is due to myself that I should say something at this time in regard to the matter, inasmuch as I have, in the main, consented to the article under consideration, being a member of the committee who reported this article, and concurred with the majority in their report. In what I have to say in reference to this matter at this time, I trust that I shall not so far depart from the legitimate line of argument to be used upon a question of this kind, as gentlemen have done who have preceded me upon both sides of this question. Undertaking to apply a general organic rule to separate and individual cases, is not the province of wise men or of statesmen. It would become a necessity if we were compelled to legislate, so far as regarded the fundamental law of this State, in that direction, that we should keep in perpetual session, so that as each exigency might arise in the history of the State, we should go to work to mold the organic law in a way to take hold of that particular subject. Now, sir, we can only look at these questions in the broad light of general principles. It has been said by a power higher and wiser than ours that there is no such thing as infallibility or purity in the human constitution, whether it be the constitution of an individual or of an aggregation of individuals. There are always, and there must of necessity be, great mistakes in any organization of human government. There is an impossibility, because we are finite and not infinite, that we should make a perfect form of government. I approach this subject, sir, with a view of taking in, not simply questions of mere locality, but rather to bring out the great principles which lie at the very foundation of our form of government, principles, sir, however gentlemen may have undertaken to state the opposite, which had their germs, so far as regarded the action of the individuals connected with them, in the free cities of Continental Europe. What was the reason for the aggregation of capital and of commercial power in those cities? It was, sir, to enable them to stand up against the inroads of the feudalism and despotism of the times. It was because the body of the people, the mechanics, laborers and manufacturers, gathering themselves together for the purpose of carrying on the employment in which they were engaged, were under the necessity of also aggregating themselves into a political society to resist and repel the encroachments and incursions of their rapacious neighbors. I take it upon me to say that the history of the world gives no evidence that the principles of free government were ever promulgated or sustained by persons who were, from the necessities of their condition, scattered over a wide range of country. It is the aggregation of individuals to pursue lawful and laudable enterprises that has given rise to those great principles and to the idea of the freedom of men from control other than such as he himself desires; and I believe that those principles would not have attained at this time the great and guiding influence which they have in this State of New York and in these United States of America, if it had not been for their early development and growth in the free cities of Continental Europe. This being so, it seems to me that this is a broader question, and that it should be looked at in a broader light than it has been looked at so far in this debate. It may be well enough to premise here that I hold that this question is not a political question, but a question rising above and beyond mere party politics, and to declare that I, in subscribing to the creed of the union republican party, and taking my place as a soldier in its ranks, never agreed to subscribe to all that might be said by individuals of that party as being part and parcel of the creed of the party. Since I have been a member of the political body to which I now belong, I have had the honor to proclaim in the Legislature of this State the sentiments and feelings that to-day inspire me in what I have to say upon this subject, and they are in hostility to circumscribed territorial legislation within the limits of the State of New York, hostility, sir, to any legislation that singles out a portion of the people of the State and deprives them of rights which other portions of the people possess and enjoy. I hold that if this idea of transferring a portion of the power that legitimately belongs to any locality in regard to the government of its own affairs, to the State government here at Albany, be accepted at all, it should never stop short, it cannot safely stop short, of taking the whole of these powers away from the locality, and governing it as a province, rather than as an integral portion of the State of New York. The past history of this system shows that aggression in that direction can never stop, but must be continued. If the system had stopped with the establishment of a police commission in the city of New York, as a great good would have come out of a great departure from republican principles, it might have been submitted to by the people of that locality, and by those who oppose the doctrine upon which that action was based; but when we find that step, once taken, followed up by another and another and another, until nothing but the mere semblance of authority is left in the local government, and that there is still an endeavor to increase those measures of aggression as the years roll over our heads, we see that, of necessity, as I have said, the system must go on until it results in the assumption by the State of the entire control of the locality in question. It has been remarked here once or twice that we should take this matter home to ourselves, and I ask any man representing upon this floor any of the rural portions of the State, whether or no he would submit, in the name of his constituents and for himself, to any innovations upon the rights that they, in equality with the people of other portions of the State, enjoy, by transferring those rights, so far as regards matters of local government, to the central State government at Albany? Sir, the answer would be the same from every member of this Convention: "No! we will not submit to any such thing." Now, what do we find in connection with this matter so far as regards the city of New York?

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We say to the people of that city: "You may go to the polls and vote for the Governor and the other State officers; you may send up from your number representatives to sit in the Legislature of this State; but we will not concede to you those rights which we ourselves enjoy, equal with the people in every other portion of the State; we will take from you the power of self-government and self-regulation of your own local affairs—a power which the people exercise in every other portion of the State." Now, sir, my doctrine in regard to this matter is that these laws, so far forth as they are concerned, should be universal and uniform in their application to all portions of the State, and that there should not be any community picked out and isolated from the rest to be trammeled in its natural and ordinary rights of local government by regulations which are not imposed upon people of other portions of the State. I have no desire, and I do not mean to allude to remarks which have been made upon this occasion in this Convention for any other purpose than to illustrate the position which I occupy. I do not intend to enter into this controversy in regard to incidents and events that have occurred during the past few years, and if I speak of them at all I only allude to them for the purpose of giving point to the argument that I desire to impress upon the minds of the members of this Convention. Now, it has been said here, and repeated more than once, that, in this particular city of New York, there is a population which cannot be restrained except through the exercise of the power of the Legislature—a population that is above and beyond the ordinary powers of local law; and that it requires the strong executive arm of the State to be wielded over it in order to keep it within the bounds of reason and the limits of law; but what do we say to these same people who, it is undertaken to be argued here, are entirely unfit to govern themselves in their local affairs? We acknowledge, sir, that without any change in their character or circumstances, they are to be regarded as part and parcel of the sovereign people of the State, having a right to help, by their votes, to elect the officers who shall administer the government of the State at large.

Mr. AXTELL—I understood the gentleman to say that the establishment of commissions was a great departure from republican principles. Were the men of the early days of the State anti-republican in those days. I mean when the mayor of the city of New York was appointed by the Governor?

Mr. ALVORD—I cannot see any point to the question asked me by the gentleman from Clinton [Mr. Axtell]. The days when the mayor of New York was appointed by the Governor of this State under its original charter, were the days of federalism. They were days of the past, when progress had not got to the point that it has now reached.

Mr. AXTELL—Allow me to state my point for the gentleman. I had supposed that in the early days of this State, in the period near to the time when the nation was born, there were some men who controlled the State who were actuated by the pure principles of republicanism. I have always been so taught.

Mr. M. I. TOWNSEND—George Clinton for instance.

Mr. ALVORD—I will ask the gentleman another question though I do not ask him to answer now.

Mr. E. BROOKS—Will my friend [Mr. Alvord] allow me to make a remark. Since the gentleman [Mr. Axtell] has referred to the early days of the State of New York as being pre-eminently republican, let me refer him to what they adopted in the State Constitution, to wit: that the powers of the government delegated to Congress may be reassumed by the people whenever it shall become necessary to their happiness. I think that is an answer as to the republicanism of our early days.

Mr. M. I. TOWNSEND—Because they were thoroughly republican.

Mr. ALVORD—I am entirely willing to stand all day and have gentlemen interrupt me in the course of my argument. I have no sort of objection whatever to it, but it will only result as a matter of necessity in the prolongation of the time I shall use in what I have to say, and in that way it may be disagreeable to the body of the Convention. Now, sir, in answer to the gentleman from Clinton [Mr. Axtell], I say that so far as it regards republicanism or the democratic ideas of the people of this State or nation, they had their simple birth in the results of the Declaration of Independence. They had eyes not yet fully accustomed to the light of reason, and were groping, as it were, in blindness, but from that day to this they have progressed up to the position which they now occupy. I ask the gentleman from Clinton [Mr. Axtell] and members of the Convention, whether they desire to return to the position of affairs in 1777, when not only a property qualification was necessary for the purpose of enjoying the right of suffrage, but a certain status, so far as property was concerned, was necessary for the enjoyment of office. I will not, sir, undertake to say that in that regard, although the gentleman from Clinton may, that those men were purely republican, and that there was no possibility of any improvement so far as it regarded their Constitution. I think a great improvement has been made. I think that he and I are contending together that it is manhood and not property in which should reside the right to dictate what shall be the rule of government. There has been progress in very many other things. But a few short years ago in this State of New York, in every village and in every city in its limits, a property qualification was necessary in order to be a voter within the limits of that village, for municipal purposes. That has been entirely done away with, and it has been done upon this ground, and upon the ground which is tenable and cannot be controverted, that a man, although he may be a poor man, and have none of the goods of this earth to put upon the assessment roll, yet he is an integral portion of the community, and that in reality, although the assessment is put upon the property of men, yet in the end the taxation comes out of the man who toils with his hands—that taxation results finally in being wrung out of the labor of the land. That being the case, it is

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wrong to say that the source from which taxation comes in the government of the State, should have no voice or right in the administration of its laws. I stand up here to-day, sir, so far as I am concerned, against the proposition of the gentleman from New York [Mr. Opdyke], rendering the property qualification necessary to the election of one of the boards of the common council of that city. Property, sir, what is it? It is the enjoyment of power in the hands of an individual, which gives him a great and mighty force in the management and control of the affairs of the city. It compels, from its very situation, those who stand down below it, to bow down and pay all the exactions that are put by the government upon it. Sir, under these circumstances, property should not be thought of in a republican government. Property should not enter into the controversy at all. It is men, it is the component parts of the government that should speak, and should speak unmistakably in all places, and upon all occasions, irrespective of property that may be attached to their name, or be in their possession. Sir, what is a republican government? What is the true democratic idea—not in any partisan sense, I use the term—of a republican government? Equal and exact justice, equal privileges to all portions of the community; not singling out any portion to be dominated over by another, nor leaving any one portion supremacy over the other. Deal to the man, wherever he may reside, just those rights that you would deal to any other man. If you give to the city of Syracuse, in their municipal corporation, a right to direct and take care of their affairs, give the same right to the city of New York. If you are to make any rule in this matter, when there shall be any different interest in the management and control of the affairs of the city, you can only make an excuse for it by placing it upon the question of the number of inhabitants within the limits of the city, and putting that dividing line in your Constitution. If you desire to say that cities arriving at certain points of population shall have certain rules to guide them, do so; but do not permit that there shall be taken out of the mass of the cities in this State, this one, that one, or the other one, and say that so far as it regards their domestic concerns, they are to be regulated different from a city lying right along side of it or from a city in another part of the State. In other words, I believe in the laws of the State being equal in their operation, so far as it regards all the powers and duties conferred upon or required of the people. Now, sir, we have in this State, towns. Is there any difference in the government of towns in this State? Are they not under one form, under one government, with one set of officers from one end of the State to the other, each like the other? There are towns in this State where there are five hundred people, and there are towns in this State where there are twenty thousand, and yet there is an inflexible rule that governs us in a republican form of government, that imposes the same duties, which grants the same privileges to towns of the smaller as to towns of the larger growth. It does not differ, so far as that is concerned, one from the other. We have counties in this State—counties so small, that although recognized territorially, as entitled to a member yet would not have the right to be so represented in the Assembly, according to their population, if they were part of another county.

Mr. M. I. TOWNSEND—Will the gentleman from Onondaga [Mr. Alvord] have the kindness to tell me if he is unwilling that a different rule should be applied to the cities of New York and Brooklyn from that which he has applied to the other cities in the State, how happens it that he assented to the reporting of an article, the great body of which is taken up with a specific distinction proposed to be put in the Constitution, distinguishing between the cities of New York and Brooklyn, and the other cities of the State?

Mr. ALVORD—I will say, in answer, that in making up this report the committee has taken the population of those cities into consideration. There is a necessity for a larger amount of executive force for those large cities than there is for cities in the interior of the State; but as those cities shall grow up to the same position, there will probably be the same necessity for a similar provision in regard to the administration of their governments. We have not, nor have we thought of departing from the idea from the beginning to the end, of preserving in this article, that to local government shall be given the power to administer the laws applicable to that government. It is true that in the cities of New York and Brooklyn there may be some officers named different from those of other cities in the State, but still the power rests in the locality. It is not permitted to be exercised, no matter what that form may be by the central government against the wishes and desires of the people in the localities. The gentleman interrupted me when I was speaking in regard to counties. I wish to carry out that idea further. We have a county in this State having sixteen thousand people, and we have the county of Albany, having a vastly greater population. There is a difference, sir, in this, that the county of Albany probably with a just census would be entitled to five members of Assembly. The county of Schuyler would be entitled to one-half of a member. As it is, it has one member, and the county of Albany has four. There is an inflexible rule that governs us in the distribution of the power of this State under the authority of the Legislature. This comes from the fact that the laws in reference to the administration of affairs in counties is alike in each of the counties of the State; it is because that an attempt to make a difference in favor or against any one county of the State as compared with another would compel the people to rise up in rebellion against such an invasion of their rights, and to put down the government which should undertake such an operation. I say, and I repeat it, in hopes that some time hereafter I shall have an opportunity to speak again upon this subject, that no party and no set of men can ever expect or hope to be successful in carrying on a government in any republican country who attempt to wrest from one portion of the community powers which they freely and liberally give to other portions. I tell him that they have seen in the past

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history of this practice of filching away the power from the great metropolis of the State, written with a pen of iron upon imperishable marble, what will be the results? Sir, there has been progressive action against our party in that metropolis. Not so much because of the difference of ideas between them and us in other portions of the State, but because of the fact that we have gone on encroaching upon their rights in so far forth as they are concerned, which we have absorbed and taken to ourselves; and just so long as we shall continue this course of proceeding, the population of that city will, as it aggregates, increases and grows, come into power in the politics of this State, not by adding to it what little of force it can gather in the country, but by being itself absolutely the power of the State, not yet deprived of the vote upon the general ticket, not yet deprived of the power of making laws for us. When they come to have the matter of government in their own hands, when they shall control the government of this State, and shall have once more got into the seat of power, I then look forward, and I look forward with a terrible apprehension and trembling to such a revulsion in the opposite direction from which we have been going for the past few years as shall lead us to a lower depth of horror than we have seen perpetrated in the riots in New York city. I fear, sir, that when we shall encroach upon the rights of these men as proposed by legislative enactment of this State a little longer, the time will come when they will turn upon us, when they shall have the numerical power under our system of government so to do, and get themselves in places of power and authority, that they will go a great way toward crushing out those matters which are near and dear to our hearts, which are within the limits of the Constitution which we are permitted to enjoy, and that we shall find ourselves, under the domination of the terrible hate and revenge engendered as it has been by past legislation so far as they are concerned, hewers of wood and drawers of water.

Mr. M. I. TOWNSEND—I submit to this committee, whether, the gentleman from Onondaga [Mr. Alvord] in his last few pathetic sentences has adequately described, so far as human power can do, the state of things to which he proposes immediately and now to commit the citizens living in the metropolitan districts. If this body of men, when they get the power in the State are to work the horrors that the gentleman has just described, does not that gentleman by his proposition to-day, undertake at once, now, when it is not necessary to do so, to commit the citizens of these districts to the same horrors. Sir, that gentleman ought to remember the prayer of the Kentuckian. The story is told of a Kentuckian who was lost in the woods; that he encountered a bear; the bear was a powerful fellow, and he was afraid of the result of the contest, and he ran and made a great struggle to get away from him; but he found after a while that he could run no further, and then he turned and prepared himself for a fight, and drawing his knife, with a sort of a Kentucky look, he sent up a prayer to Heaven like this: "Oh Lord, help me if you can consistently, but, if you cannot help me, don't help the bear." My friend is telling us what the bear will do, and yet he proposes to bring on the fight. He proposes himself, by his own will, and his own motion, to help on the bear whose terrific growl he seems to have heard. Let me ask this Convention, has any man at any time, whom the organized men in the city of New York, have had the fortune to send to either the Senate or Assembly of this State, voted against the police commission by which the lives and property of the people of the metropolitan district have been protected. I ask my friend from Albany [Mr. Harris,] if a single man holding an official position from the city of New York, who has been ready in all respects to hold up his hands in his official position during the last six years, has cast his vote against it.

Mr. ROGERS—I would like to ask the gentleman from Rensselaer [Mr. M. I. Townsend] a question. Did not Daniel E. Sickles vote against it? He was a democrat.

Mr. M. I. TOWNSEND—When Daniel E. Sickles was a democrat, he thought as a democrat, and felt as a democrat; but having become a republican, he put away democratic things. [Laughter.] My friend from Richmond [Mr. E. Brooks] followed precisely the opposite course. As long as my friend from Richmond was on the side opopposed to the bear, he fought the bear; but when—

Mr. E. BROOKS—I have never voted, if the gentlemen will allow me a word, on the republican side; although the gentleman voted once on the democratic side, and then turned republican.

Mr. M. I. TOWNSEND—Not at the time my friend was studying Hindoo philosophy. I was not then on the democratic side. The point I take is this: that no man in the city of New York holding an official position as the representative of the city of New York in Senate or Assembly, has ever been opposed to the Legislature giving them protection for the lives and property of citizens.

Mr. HUTCHINS—I would ask how it is, that with the remonstrances of persons I suppose worth at least three hundred millions of dollars in the city of New York against the repeal of the police law, and the fire insurance companies in the metropolitan district against the repeal of the fire department law, and that every health insurance company remonstrates against the repeal of the health law, without a single petition coming from the city of New York in favor of the repeal of these laws, that we can assume that there is any desire for their repeal?

Mr. DEVELIN—The majority of the people gave their verdict last November in opposition to the New York commissions.

Mr. HUTCHINS—If that is so why has it not been shown by some petitions here in favor of the law?

Mr. DEVELIN—They have petitioned through the ballot-box.

Mr. E. BROOKS—Will the gentleman allow me a moment? I hold in my hand the annual message of the mayor of New York, elected, as we all know, by an immense majority since this Convention assembled in June last. I think his

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voice is entitled to some little weight in the Convention, and I would like to detain my friend [Mr. M. I. Townsend] for a moment while I read.

Mr. M. I. TOWNSEND—Go on; I am willing to learn.

Mr. E. BROOKS—Mayor Hoffman, on this subject, uses this language:

"Only the form of government remains, the substance having been transferred to various metropolitan district boards and commissions, all acting independently of each other and of the municipality."

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"We can never have an efficient or responsible administration of municipal affairs, until all departments are made portions of one harmonious system, under the control and direction of the chief executive, who shall have powers adequate to his responsibilities. The duty of giving us such a government belongs to the Legislature and to the Constitutional Convention."

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"I am glad to know that these views are sustained by many men of all political parties, and that many of those who have favored and sustained the metropolitan commissions concede the fact that it would be far better for general interests, if they were all parts of a system, of which the mayor of the city should be the responsible head."

Mr. M. I. TOWNSEND—The gentleman from Richmond [Mr. E. Brooks] has confirmed the position I took that the men who sustained this abrogation of the barrier of protection that surrounds the lives of the citizens of the metropolitan district are the same body of men that vote the democratic ticket. As my friend from Richmond however confined himself to the views of this same John T. Hoffman (a very excellent sort of a man by the bye, I only wish his politics and associations were better). [Laughter.] I say as he confined himself to the views of Mr. Hoffman at a period when he had become an interested claimant for the favor of the disorderly classes in the city of New York and elsewhere, I will now take the privilege of reading to this Convention what this same John T. Hoffman said when he was recorder of the city of New York, and when he himself was less of a politician, in regard to this same metropolitan police. He said:

"We have one of the most complete forces in the world—a force that is approaching as near to perfection as ever can be attained in this city and county of ours. * * * If those officers who are charged with the administration of public justice, and the jurors whose duty it is to examine patiently the cases which will be submitted to them, do their duty, the laws will be enforced to the terror of the offenders, and to the protection of the community."

Mr. DEVELIN—Will the gentleman allow me to interrupt him a moment by stating that that charge to the grand jury was made by Recorder Hoffman when the metropolitan police commissioners was a non-partisan board, composed of two republicans and two democrats. Now it is the other way.

Mr. M. I. TOWNSEND—My friend who has just taken his seat [Mr. Develin] has seen fit to give me a suggestion. I would ask what has there been in the public action of that metropolitan police board since it became a partisan board, more than what it ever did before when democrats were members of the board?

Mr. DEVELIN—I was speaking about that. I was speaking about the fact that public confidence was not so great when the board of police commissioners was made up of members belonging to one party as when the members were divided equally between the two parties.

Mr. M. I. TOWNSEND—Now, Mr. Chairman, this whole suggestion of my friend from New York [Mr. Develin], speaking respectfully of him personally, is simple nonsense. The police commissioners owe their appointment not to a republican Governor, they owe their appointment not to the favor of the republican party, but they are elected by the Legislature of the State. This very winter, at the present session of the Legislature, they are to elect such a man as they please, because they have a majority, and if they chose to elect a democrat, as they undoubtedly will, they will then succeed in making a tie in that board.

Mr. DEVELIN—The gentleman is in error in some respects. Originally the members of the board of police commissioners were appointed by the Governor, but subsequently there was a compromise arranged between a democratic Governor and a republican Legislature and there were two republicans named in the bill, and two democrats for the positions of police commissioners. They drew for terms and one of the democrats drew the short term. Upon the arrival of the time when this short term expired, the republican party turned him out and put a republican in his place, so as to make the number three to one.

Mr. M. I. TOWNSEND—Then as our democratic friends have such a tremendous majority in the city of New York and such a tremendous majority in the lower house, they have the power to eradicate the evil, if they so regard it. And I can assure my republican friends that when democrats have the power, they have no scruples in the matter of exercising it to the fullest extent.

Mr. DEVELIN—Did the gentleman say that the democratic party had no scruples? [Laughter.]

Mr. M. I. TOWNSEND—No scruples about matters in which they think they are right. [Laughter.] They have none of this hesitation. They never get their consciences up to so high a pitch as to side against their own party and make speeches against it, which my friend from Albany [Mr. Harris] felt it his duty to do yesterday. If they cannot fight for the man they never turn in and help the bear. [Laughter.] Let me say in regard to our national affairs that it has been the misfortune of the republican party in the northern portion of the country that they have been timid and hesitating, and they continued so until in the providence of God, it was the timidity and half-heartedness of the anti-slavery portion of this country that emboldened and induced the men at the south, who never hesitated in carry-

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ing out their objects to believe that we were physical as well as moral cowards. That was the difficulty that produced our dreadful war. But when the south found we would fight, that we were not, in action in the field, a body of cowards, though our leaders had been cowards, the southern men would have been exceedingly grateful to have got out of the war. They felt very much like another Kentuckian in another fight—they wanted to be counted out. Sir, if the speech of my friend from Albany [Mr. Harris] and the speech of my friend from Onondaga [Mr. Alvord], are carried down to the polls they will make glad those who differ from us in their notions of government. But, sir, I will not read a lecture to my friends on this subject. I do not speak for this purpose, and I leave it to my friend from Onondaga [Mr. Alvord] to read these lectures. He has a prescriptive right to do so [laughter], and I shall not encroach upon that gentleman's prerogative for it is as sacred as the right of a gang of rowdies to wallop their peaceful neighbors [laughter], for which my friend is contending; for he really contends for the right of local rowdies, who happen to be in the majority, to override and violently maltreat and abuse the God-fearing men in the locality who are in the minority. I wish to answer another of my friend's arguments. He did make a beautiful argument in favor of putting New York and Brooklyn on the same footing as the other cities of the State; and yet in the article which he advocates, he has made a distinction between these cities and the other cities of the State. Why, sir, this love of locality? How long is it since I asked this Convention to allow the Assembly districts to send representatives in your house of Assembly? How long is it since that question was discussed here? There was no love of localities then. It was "help the bear," and henceforward twenty-one Assemblymen, representing one political party, are to be sent from the city of New York to the Legislature. Assembly districts were to be swallowed up in the vortex of county representation. It was decreed by this Convention in compliance with the wish of the gentleman from Onondaga [Mr. Alvord], though whether my friend from Albany [Mr. Harris] voted with him on that question or not I am unable to say, though I strongly suspect he did, that there never should be another republican in all coming time in the Assembly of this State from the county of New York and the county of Kings. Where was this love of locality then? This love of locality is vastly like Pat's idea of the disease called the glanders in a horse. He was trying to sell his horse, and the man asked him if the horse had not the glanders. Pat was not quite certain as to whether the glanders was a benefit to the horse or an injury, and so he made the judicious remark, "If the horse is better for the glanders he has got the glanders enough, but if he is not better for it he has not got the glanders at all." [Laughter.] If it would help our friends, the democrats, to carry out their party views in regard to public policy to give the whole representation of New York to the democracy, my friends are ready to give.

Mr. S. TOWNSEND—Will the gentleman from Rensselaer [Mr. M. I. Townsend] permit me to interrupt him for a moment? He alludes to some yet unperfected action of this Convention looking toward the election of Assemblymen.

Mr. M. I. TOWNSEND—Yes; to something we have passed upon.

Mr. S. TOWNSEND—I would ask the gentleman, how long it is since the framers of the Constitution under which we now exist, with the most emphatic democratic majority among its members, provided that the precedent of seventy years should be departed from, and the principle the gentleman now so much lauds was established?

Mr. M. I. TOWNSEND—That is the action of the Convention of 1846, twenty years ago, and I will say that when that subject was on the tapis I voted for the system of electing Assemblymen contained in the present Constitution. This love of localities on the part of my friend is a new love. It does not pervade gentlemen except by fits and starts. But, sir, there is another reason why I am opposed to this whole proposition. I do not believe in autocrats. I do not believe in making the mayor of the city absolute. I do not believe, under the pretense of giving a locality the power of controlling its own affairs by its own vote, that one man should be elected who for three years shall be an autocrat, more absolute, if possible, than the Emperor of France himself; for the mayors of Brooklyn and New York and the conditions of this proposed article have a power never known in any community in a civilized country to be exercised with safety to the community. Such a power could never be exercised with safety to the interests of the community intrusted to one man. Why, sir, let us see in what period we are doing these things. Let us see under what circumstances the chairman of this committee defends this state of things. My friend has hardly got his coat brushed of the dust of toil and travel in coming from Washington, where he held a seat in the Senate, and where he voted to take away from the Chief Magistrate of the United States the very power he proposes to confer upon the mayor of New York, to take them away as a means of insuring the safety and well-being of the nation. If it was not safe to trust the President of the United States with such power as he was intrusted with, is it any more safe to intrust the chief magistrate of the city of New York with still greater powers? If my friend was honest, if my friend believed he was acting for the well being of this country in crippling the power of the President of the United States, I leave it for him and for his constituents to decide as to what has produced the change in his views and has led him to adopt the course he has adopted here. But I go beyond the gentlemen of the committee, and I commend myself to the members of this Convention, shall we not exhibit to the world a ridiculous inconsistency sending our representatives to Washington to cripple the power of the President of the United States by every vote and every device that our Representatives and Senators can bring to bear, and yet we, professing to support these men and sending these men there to do the acts they do, to confer a power upon the mayor of the city of New York

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greater in his locality threefold than was possessed by Andrew Johnson, two years ago? For myself, I believe that Congress is doing right. For myself, I believe that we are doing right in supporting Congress. I say another thing, that if men wish the triumph of the parties who are supporting Congress, let them show that they wish it by their works; because, sir, I believe in the scripture doctrine that by their works we shall know them. When a newspaper announces every day that it is in favor of General Grant, and yet thrusts a knife at the heart of every friend who sustains General Grant, I judge that newspaper by its works, and I tell my friend that if the people see men in a public position, sustaining the good men in this State hitherto acting with their party, striking a death blow to the best interests of the people who claim protection under the power possessed by that gentleman's party, they will judge such man's principles by their works. I understand what it is that our friends propose to do. My friend from Albany [Mr. Harris], and my friend from Onondaga [Mr. Alvord] mean to give over thirty thousand men who have acted with them in the city of New York, to the tender mercies of that mob which was guilty of outrage and crime in 1863. We have seen how this thing works. I have said here that allegiance and protection were correlative. I believe that nobody has disputed that statement. How has it worked in our national struggle? When war broke out there was a large body of men in the Southern States who were ardently attached to the union of the States. They did not hold with my friend here that a man owed his first allegiance to his locality, but that he owed his first allegiance to the government of his country. Yet they found that the government of the country could not protect them; and what was the result? These men were forced, for the preservation of their lives, to go hand and soul into the rebel cause. Men originally loving their government as well as the gentleman from Onondaga, and men loving it all over the South, were compelled, for lack of protection, to give their adhesion to the rebel cause. I propose to use plain language. Can a man live to-day in the sixth ward of the city of New York and not vote the democratic ticket, if he votes at all?

Mr. E. BROOKS—Yes, sir.

Mr. M. I. TOWNSEND—I will allow my friend [Mr. E. Brooks] to say so now, because he has changed his views from those expressed in the pamphlet that he had put out in olden time, and which pamphlet I have had the pleasure of reviewing lately. I think there was a time when my friend thought differently.

Mr. E. BROOKS—Never.

Mr. M. I. TOWNSEND—I have stated that it is perfectly well understood that in large localities in this State, if the government do not protect men, they have no choice. You must vote with the majority or your life and your property are in danger. Sir, as I have said, I propose to talk plainly upon this subject—in any thing that appropriately belongs to the discussion of this question. Unless some action be taken upon this subject the republican party of this State must expect to go to the wall. Well, sir, if we go to the wall, I propose to go to the wall with colors flying. I propose to go to the wall with my integrity, with my self-respect, and with the respect of every good man in the State who holds the same political faith as myself. Does my friend from Albany [Mr. Harris], or my friend from Onondaga [Mr. Alvord], believe he can go into any house of God in the State of New York and find there that the good men who meet about God's altar wish that men living in districts where they cannot protect themselves should be left to the mercy of the local mob? I tell my republican friends that if they do not retain the confidence of the good men in the State of New York they will have not only to go to the wall, but they will deserve to go to the wall, and much further than the wall. There is a feeling and there is a power of public opinion in the State of New York (I do not say there is in the city of New York); and that public opinion to-day, however unwilling my friend from Onondaga may be to follow it, says to this Convention that if there are localities in this State in which, there are, by the influx of men coming from other climes, but imperfectly educated and imperfectly civilized, and in which localities the powers are not used to protect the citizen, it shall be the duty of the central authority to protect them. God says you shall protect them, and there is but one power on earth which says you should not, and that power is the democratic party of the city of New York. If any man of my way of thinking regards the clamor of the democratic party in the city of New York more than he does the fiat of his God and his purposes, the fiat of public opinion in this State and the fiat of his own conscience, then we can be given over to ungodliness. I say that, sir, because, as long as men can be permitted occasionally to be elected who dare to doubt the democratic faith in the city of New York, they have said so—they say so to-day; and the cry has come up here, and it is a Macedonian cry, "Come over and help us." The State of New York must protect us in our homes, our lives and our property, and, sir, we have no right to travel out of the record to do a wrong merely to satisfy the clamor of local politics in certain localities of this State. Why, does not my friend know that when you get the democratic members outside of this Convention they will admit all these things? I commend one word of consolation to my friends on the other side. There is in the city of New York a paper called the *World*, and it is understood by us, away up in the country, to be the organ of the democratic party. I read in that paper, a short time since, in a discussion between the *World* and *Tribune*, as to whether it felt that it was advantageous to society and the government to have the voters of certain wards in the city of New York govern the country, and the *World* replied that it was yet a problem whether any people, black or white, could successfully govern themselves by universal suffrage. This is the real opinion of the democratic organ. They doubt themselves. The exhibition before their own eyes loads them to do it. I will not allude to private conversations, because that would not be proper; but how many

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are sitting in this hall, coming here with the democratic stamp upon them, labeled with democracy sufficient to pass the examination of the United States custom house officer, have said over and over again that they believe that this experiment of popular government is a failure. One respected friend of mine added the word "devilish," saying that it was a "deviliah failure." And, sir, if the votes of such localities are to be taken as the vote of the people who are to carry out the principles of popular government, I do not know who would not adopt the sentiment quoted, if not the expletive, when the democratic press states that their own people are unfit to govern themselves, that popular sovereignty is a stupendous failure. But I stand here to-day as much of a believer in popular government as Michael Hoffman was in 1846. I am as much a believer in popular government as Thomas Jefferson was in olden times, or as Daniel D. Tompkins was in still later times. But when you get into one pot a collection from every portion of Europe, and Asia and Africa, some of them so bad that they cannot live at home, and the fugitives from every portion of our own country, I have no doubt but that the State should exercise some supervision over the boiling, and occasionally stir up the pot.

Mr. VERPLANCK—I suppose the good in that pot were the thirty thousand republicans.

Mr. M. I. TOWNSEND—No matter how many thousand voters. I do not care. The fewer there are who need protection, the more incumbent it is upon us that protection should be provided.

Mr. SCHUMAKER—How about Troy?

Mr. M. I. TOWNSEND—I talked about Troy yesterday. We have work in Troy that can be performed by a body of men that came there without inquiring into their previous character, and that body has created a state of society such that there are wards in the city in which there is no possible protection by any regular exercise of local power to preserve good order. I spoke more fully on this subject yesterday, and my friend must excuse me if I abstain from further talking upon that subject now. I have another thing that I wish to say to my friend from Onondaga [Mr. Alvord]. We have had under the administration of my friend from Onondaga as the leader of this house, a position to which he is justly entitled, from his experience, and from the accuracy of his general notions of government, we have had probably thirty pages of our book, where the discussions of this Convention are printed and perpetuated, delivered to us, arguing against the policy of legislating in the Constitution. My friend has told us that what you put in the Constitution stays there forever, or until the Constitution is changed, and that exigencies may arise that shall render it utterly undesirable that these provisions shall remain in the Constitution. I confess, as my friend from Albany [Mr. Harris] said yesterday in the first part of his remarks, in answer to me, that I was "amazed" when I found my friend putting his hand to a whole book of legislation in regard to cities. What has made this change? It was wrong to legislate about charities. It was wrong to legislate about the school system; but it is right to legislate about the cities, and the more minutely the better. Sir, I wish myself, individually, to stand well before that portion of the people of the State who have ordinarily acted in politics with myself. I have said thus much not only with a view to urge upon this Convention the right which we living in the metropolitan districts have to protection, but for the purpose of vindicating my action in regard to this matter, to those whose praise I desire, to those who honored me with their votes in sending me to this Convention. If I have in any thing transgressed the rules that should govern me in a discussion of this character, it has been from no intention to do wrong. It has been from zeal which is, as my friends well understand, a characteristic part of my nature, and without which I should cease to be.

Mr. ALVORD—In rising to answer the remarks made by the gentleman from Rensselaer [Mr. M. I. Townsend], I think I will begin where he closed, and say to him, that in the few closing remarks which he made he has shown that he is one of the greatest of observers, for he has declared that my humble self am the leader of his side of politics in this Convention, and he, sir, in face and eyes of that announcement, comes forward and condemns me, his principal. I think that I ought to bow my thanks to the gentleman from Rensselaer, for giving me the high, enviable position in which he has placed me. I hope that other opinions will agree with his in the Convention, but I very seriously doubt that for any thing that I have done in the Convention I should receive any thing more than the single vote from the gentleman from Rensselaer. I wish to be understood by the gentleman from Rensselaer, and by this committee and this Convention, because, for the first time in the history of our proceedings, so far as regards the fundamental principles which we were to lay in this foundation of the government of the State, there has been an attempt to control the action of any individual member of this committee upon the part of any portion of the members thereof openly in debate, by saying that thus you must act, and in no other direction, because your party, to which you are attached are in favor of that manner of conducting the affairs of the government of the State. I am very sorry, indeed, that my distinguished friend from Albany [Mr. Harris] and myself, have been read out of the republican party to-day. I am very sorry indeed, sir, but I desire distinctly to state where I stand, and that if I believed for a single moment in the principle undertaken to be engrafted upon our minds by the remarks of the gentleman from Rensselaer I would not stand up here to-day to advocate the position which I occupy. But ouside of and apart from all party considerations, outside of and apart from all considerations which can bind me to any particular class of men in this Convention, I simply come up here to state what are my views and what are my principles, and to carry out those principles in my action in the Convention in this regard. It is not a question of expediency with me. It is not a question whether or no the result of our action in one direction or the other here, will or will not cause us to go to the wall. If it was a question

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of principle in which I believed as heartily as the gentleman from Rensselaer [Mr. M. I. Townsend], I would not only go to the wall standing upon it, but I would go to the grave, although I knew that it might be yawning to receive me, rather than depart from principle in the organic law of the State, and cater to the idea of expediency. I spoke in reference to the effect of past legislation, and continued legislation of this State in reference to this question of commissions, not in a threatening way, for the purpose of conveying the idea that they were rapidly hurrying the party out of existence, so much as to say to the men of this Convention that it is my honest belief that if they stand up and undertake to protect this idea of theirs, then of necessity that party must fall. They must go to the wall, I care not what the party is; I care not how high it may stand in the estimation of the people of the country, if it is not entirely and absolutely grounded on principle, it must in the long run and in the end be ruined; and it deserves so to be. I can tell the gentleman from Rensselaer [Mr. M. I. Townsend], so far as it regards this matter which he undertakes to come in here with as the creed, a part of the creed and the doctrine of the republican party, that if this is to be the test of the republican party, if this is to be the great thing that the republican party are to stand by and cluster around, that he will find not only myself, he will find not only the gentleman from Albany [Mr. Harris], but, at least in my immodiate neighborhood, sir, he will find very many men who have stood up in the past and are standing up to-day in favor of the great ideas of the republican party, in carrying forward this controversy in which they have been engaged, who must separate and shake hands and part from him and the other portion of the republican party. I can tell him that there is yet left enough of that democratic element in the republican party of this State which forbids this encroachment upon the rights of the people of the State. Upon great and grave questions of national policy, owing to the peculiar circumstances of the past, those men have, and still continue and will continue to act with the republican party. They have not looked for this in the past so far as regards their action, they have not expected that this was a part of the creed of the republican party, and forgetting to how down to this portion of the creed, that therefore they were to be no longer considered republicans. I trust the gentleman will not read the gentleman from Albany [Mr. Harris] and myself out of the party. If he does we have our principles left, and we may go on in the rear guard of the army of republicans in this State, and when they get into hostile conflict upon principles and upon questions of great advantage to the State, we may volunteer yet to aid them in that controversy. I have a right to go a little further. The gentleman from Rensselaer [Mr. M. I. Townsend] has made a characteristic speech here, it is true. He has made one in which he has undertaken to drag in all the former proceedings of this Convention, and undertaken to contrast the position of gentlemen now with the position of gentlemen in what he thinks are kindred matters at other times. I leave to the good sense of the Convention to determine whether there is any weight to be given to the arguments used in this direction. But he has said one thing that I deem it is right and proper that I should notice. He has spoken of the Congress of the United States of America taking away from the President certain powers which had been heretofore granted to him by the Constitution of the country. Sir, I have no question myself but what that exercise of legislative power on the part of the Congress of the United States is only to be excused—and I speak the words, sir, understandingly—is only to be excused in consequence of the great and imminent necessity of the occasion. I hold that when the very life of the nation is at stake, when the perpetuity and the very foundations of the government are threatened to be sapped and undermined forever, that then it is a duty to be bold and resolute, and to take into the hands of the people's representatives that power which God Almighty has given to any people to protect to the utmost their dearest and nearest rights. But upon no other platform, with no other base for the argument, can he or any other man within the limits of these United States of America plant himself as justifying and extenuating the action of Congress. But believing in the exigency, believing in the absolute necessity for the continuance of the government of the country, believing that it is a simple question of life or death for the country whether it shall or shall not be done, I, in conjunction with him, will hold up the hands of our representatives in Congress until peace shall come over this broad land of ours, and men shall return from their insanity of the past clothed and in their right minds, as parts and portions of the government of the country. I trust and believe that there will be no attempt on the part of the gentleman from Rensselaer, or upon the part of any members of this committee or of this Convention, to hold that this is a political test. I yield to him the belief, the consciousness, that he is right in the position which he occupies. All I ask of him in return is, not to believe that I have taken the position which I occupy simply upon the ground of expediency; but that the principle in the matter is that which I am aiming at. And I trust that this may be the result of the contention in regard to this matter, that we shall, no less than we have in the past, so far as the great and fundamental ideas that we have in reference to government, act together and for the benefit of the mass of the people. But I do say, and I repeat it, and I desire to be distinctly understood in regard to it, that I think this is a great innovation upon the rights of the people; that it has been done in violation of the Constitution of 1846, in violation of its intendment; that there has been a method of getting around that Constitution that was not foreseen by the parties who enacted it, and by the people who accepted it; and under that state of things there has been upon the part of the court of appeals of this State a sustaining of that innovation upon the intendment of that Constitution. Your judges, set aside from mere party conflict and party issues, look simply and plainly to the text

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that is put before them, and they see that there is no infraction of the text nor of any powers or duties that are given in the text; and they therefore take it, as it must necessarily be taken, that what is not absolutely prohibited may be enjoyed by the party which has the resulting force of the government in its hands. They, under such circumstances, no matter what might have been their opinion of the intention of the Constitution of 1846, finding that it failed to express that intention in exact words, as a Constitution should express it, have legalized by the judgment of that court the past action of the Legislature in reference to these questions of commission. I do not believe, sir, that there stands anywhere any man who looks upon this question who thinks or dreams for a single instant that there was any other intention on the part of the founders of the Constitution of 1846 than to take away any such power as this now exercised by the Legislature of the State over local municipalities or governments. I wish again to revert for a single moment to a portion of the argument of the gentleman from Rensselaer [Mr. M. I. Townsend]. He undertakes to say that in the city of New York there are gathered together from the four corners of the earth all that is wicked, all that is vile, all that is vicious; and that therefore, in consequence of that fact, and because there are few good men like Lot and others in the times of old, still in that city, we should come forward and protect the city against the outrages of this set of men who are thus gathered together. If this is the case, if there is no other remedy under heaven except to take the course proposed by the gentleman from Rensselaer, then we do not go far enough. This description of men whom he has painted so vividly before our imagination here are men who compose a portion of the sovereignty of this State, and through the ballot-box they help elect your officers and make your laws. If they are thus vicious in their own locality, and in consequence of that vileness have to be controlled by the executive power of the State and the legislative power of the State here at Albany, concentrated together, they have no right whatever, conceding and granting that position, to enter into the beginning of the making of the laws which shall finally eventuate, so far as they are concerned, in thus depriving them of local power and position. And it resolves itself simply into the position which I first took, and that is that in a case of this kind attempting to filch away from a portion of the people of this State that which you grant to others must necessarily result in constant encroachment, until finally you will of necessity be compelled, in order to carry out your theory to its legitimate, ultimate conclusion, and have the fruits and the benefits and the advantages of what you have undertaken, you must take all political power away from them and govern them as a province, govern them as standing outside of the great body of the people, permit them to have no voice in the action of the people, no voice in the management of the concerns of the State.

Mr. SMITH—I had not intended to mingle in this discussion at all, and do not now propose to make any extended remarks on the question; but I rise merely to offer a few suggestions which seem to me to be demanded by the course which this discussion has taken. We are met, sir, *in limine*, by the question of right, a question which ought to be settled in the outset of the discussion. If we have no right to take from the cities, the counties, and the towns of this State the privilege of local self-government, then we have no right to go further in the discussion and consider questions of expediency. That settles the whole question. I understand the learned gentleman who first addressed the committee—the chairman of the committee who made this report [Mr. Harris]—to take the ground that legislative commissions for cities are an invasion of the right of self-government. I also understand the gentleman upon my left [Mr. Alvord] who has just taken his seat, to take the same ground, and to say, in substance, that this kind of legislation by the State is an aggression upon the rights of the people. Now, I have great respect for the character and opinions of these gentlemen; I differ from them with great reluctance, and when compelled to do so have great distrust of my own judgment; but I feel constrained to say that, in my judgment, the position which they have assumed is unsound. I do not understand that the original and independent right of self-government belongs to individuals as inhabitants of a city, county, or town. I believe fully in the right of self-government, but it seems to me that this right is fully realized, and the claim to its enjoyment fully satisfied, in the organization of a State under a republican form of government. We are entitled to this right as citizens of the State, and we enjoy it as citizens of the State, whether in city or country. The people of the whole State, organized into a State government, possess the sovereignty, and may rightfully exercise control over every portion of the State, including cities, counties and towns. It seems from the arguments which the gentleman from Albany [Mr. Harris] and the gentleman from Onondaga [Mr. Alvord] have addressed to the committee, to be their opinion that the right of self-government inheres in the inhabitants of cities, as inhabitants of cities, independent of the authority and sovereignty of the State; and that any interference of the people of the State, through the Legislature, with their local affairs, is an invasion of this original, independent, and inalienable right of self-government. If that position be sound it ends this whole controversy. We have no right to go further and consider the question of expediency. We have no right to invade the great principle of self-government. But the position does not command my assent. I understand that a city or municipal corporation is nothing more nor less than a public corporation, created by the State, and deriving all its powers and privileges from the State. Under the British government, as we all know, a charter to a public corporation was a gift of the Crown. Under our form of government the people take the place of the king; they are sovereign; and the people, through their Legislature, create public corporations, and confer upon them their powers and franchises. They have just the powers and privileges granted them by the Leg-

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islature, no more and no less. The sovereign power that gives may take away. As against the government of the State, public corporations possess no original, and acquire no vested rights. The inhabitants of municipalities cannot truthfully say, "We have certain vested rights, or original and independent rights, that the Legislature has no lawful power to take from us; that to curtail our power of local self-government would be an aggression upon our rights." The extent and limitations of local powers and privileges to be conferred on cities, is wholly a question of propriety and expediency. Allusion has been made to the charter of the city of New York, and the rights and privileges enjoyed by that city in the early history of our government. The first charter was granted in 1686, and for more than one hundred and thirty-five years from that date the people of that city did not enjoy the privilege of participating in the election of mayor. For about fifty years after the formation of our government they were deprived of that privilege; and they never claimed, I believe, that their right of self-government was infringed. Some of our approved writers upon constitutional law have given their views upon this subject, and I beg to refer to them for the purpose of seeing whether these gentlemen, to whose arguments I have referred, are right in their position. Chancellor Kent, in his commentaries, on page 275, says:

"Public corporations are established for a variety of purposes, and they are either public or private. Public corporations are created by the government for particular purposes, as counties, cities, towns, and villages; they are invested with subordinate legislative powers, to be exercised for local purposes connected with the public good; and such powers are subject to the control of the Legislature of the State."

This is the definition of public corporations, including counties, cities and towns, given by Chancellor Kent, whose authority upon this subject will not be questioned by any member of this Convention. But the court of appeals have spoken on this subject. In the case of Darlington *v.* The Mayor of New York, decided not long since, and reported in 31 N. Y. Rep., at p. 164, that eminent jurist, Judge Denio, in pronouncing the opinion of the court, says:

"City corporations are emanations of the supreme law-making power of the State, and they are established for the more convenient government of the people within their limits."

A question arose in that case in regard to the power of the Legislature over corporation property. It was adjudged that the property of corporations is held in trust, and that the Legislature has the right to make any law they deem proper in regard to the control and regulation of that property. I will read a word or two, by permission of the committee, from the opinion of the court. It is very desirable that we be right on this question.

"A corporation, as such, has no human wants to be supplied. It cannot eat, or drink, or wear clothing, or live in houses. It is the representative or trustee of somebody, or some aggregation of persons. We cannot conceive the idea of an aggregate corporation which does not hold its property and franchise for some use, public or private. The corporation of Dartmouth College was held to be the trustee of the donors, or of youth needing education and moral and intellectual training. The corporation of New York, in my opinion, is the trustee of the inhabitants of that city. The property, in a general and substantial, although not a technical sense, is held in trust for them. They are the people of this State —inhabiting that particular subdivision of its territory—a fluctuating class, constantly passing out of the scope of the trust by removal and death, and as constantly renewed by fresh accretions of population. It was granted for their use, and is held for their benefit. The powers of local government committed to the corporation are precisely of the same character. They were granted and have been confirmed and regulated for the good government of the same public, to preserve order and obedience to law, and to ameliorate and improve their condition and subserve their convenience as a community."

Judge Denio, in the same case, says in relation to this passage which I have read from Kent:

"The expression of Chancellor Kent, in the commentaries, that where a municipal corporation is empowered to have and hold private property, such property is invested with the security of other private rights, is understood to mean only that it possesses such rights against wrong-doers, and not that it is exempted from legislative control."

I might read other extracts but it is unnecessary; the books all agree that these corporations are creatures of the State, and wholly subject to State control; that the individuals residing for the time being within the corporate limits, have no independent or original rights of self-government appertaining to their locality, separate from those of the State They have, as citizens of the State, the right of self-government, and that right is guaranteed to them, and they are protected in its enjoyment by the Constitution of the State. If this be so, then the only question left is one of expediency, and I do not propose to go into the discussion of that question. It has been, very fully discussed by others, and will probably be further discussed by gentlemen yet to address the committee. I only desire to say this in regard to the matter: that, so far as my observation has gone, and so far as I am able to learn, the police commission has been of great benefit to the city of New York. It was my misfortune to reside in that city under the reign of terror inaugurated and fostered by Fernando Wood. I witnessed those scenes of terror and violence caused by his police force of desperadoes, when, in obedience to his mandate, they defied the laws and made a brutal assault upon the new police. I have lain upon my bed at midnight and heard the guns of rioters as they traversed the city on their lawless and destructive mission! I have felt that insecurity of life and property under which the law abiding people of New York so long suffered. I have been there since the metropolitan police system went into operation, and seen the change; and, as the result of my own observation, as well as from what I have learned

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from other sources, believe the police commission has been of inestimable value to the city of New York. There is one other remark which I wish to make before I take my seat, and it is this: I protest against the assumption that the whole question of the prosperity and good government, and good name of New York, belongs solely to the residents of that city. I claim, as a citizen of the State, and as a resident of one of the rural districts of the State, that I have an interest in her welfare, material and moral; in her commercial prosperity, and in her good name. I have an interest in every thing which pertains to New York; not as deep an interest, it is true, as those who reside there constantly—but still an interest. New York city belongs to the State of New York; it does not belong exclusively to the permanent residents of the city. This fact is distinctly recognized by Judge Denio in the passage I have read. The people of the whole State have an interest in New York. Why, sir, every pulsation of the great heart of that city is felt to the utmost extremities of the State. How was it during the great riot? If the rioters in New York city had been successful, it would have extended throughout the State! There is not a village or a hamlet in the State of New York, where riot might not have prevailed had it triumphed in the city of New York! I have learned since, from sources entitled to credit, that in quiet localities, where law and order generally prevail, houses were marked out for destruction and men enrolled for massacre! The preparations were made, and the brutal mob waited only a triumph in New York to commence their work of destruction. And am I to be told that the people of the State have no interest in New York? They have a deep interest in every thing that pertains to her welfare; and have no right to abdicate the power which they possess, in the capacity of a sovereign State, over every foot of territory, and every citizen within the bounds of the State. But I will not extend my remarks. I rose mainly for the purpose of questioning the doctrine, that the right of self-government belongs to inhabitants of a city, as against the sovereignty of the State.

Mr. AXTELL—I do not rise to enter into any extended discussion at this time, but I wish to make an observation in relation to a remark which fell from the lips of the gentleman from Richmond [Mr. E. Brooks] last evening. I listened with some degree of attention to his ingenious attempt to make it appear that he is perfectly consistent in his change of front in relation to the metropolitan police commission. It occurred to me that a good reason for his change of front would have been to have informed this committee that the class of persons who sustained him in his action at that time had petitioned this Convention to incorporate such a provision in the Constitution as would forbid that class of legislation and abolish that commission. I do not understand that there have been any papers laid on the table of this body representing any considerable number of persons who attended that great meeting of which he spoke, remonstrating against the existence of this metropolitan police commission, or asking that there shall be such a provision incorporated in the Constitution as will abolish that commission. I listened also to his remarks on the subject of the morality of cities. Now, I have not heard any comparison made at all in this discussion yesterday or to-day between the morality of the city and the country, except the comparisons that have been made by the gentleman [Mr. E. Brooks] and those who take the same views with himself on this subject. He did not yesterday, as in two or three instances formerly, repeat the stale witticism in regard to the earth belonging to the saints, but at the same time he attempted to repel what he supposed was an attack on the morality of the city of New York, as an invidious comparison between the morality of cities and the country. Now, I do not wish to charge any greater prevalence of crime or immorality on cities than in the country; that is to say, in proportion to the population of cities. There is a vast amount of crime in the cities. There is a vast amount of crime in the country. The difference I take to be simply this: that crime in cities is brought in close contact; the population of cities is more dense, and as the result of this there are frequently serious outbreaks. These crimes, scattered over a larger portion of territory in the country, do not interfere with public order as they do when the criminal and vicious classes of society are brought into close contact, as we know they are in cities. And that is the distinction. True, crime begets crime, vice begets vice, and it is possible, owing to this fact that there may be a greater amount of vice and criminality in the cities, in proportion to the population, than in the country. This is possible. And it is also true that there is a tendency among restless spirits, there is a tendency in the turbulent elements of society, to congregate in cities, and owing to this fact there may be required in the cities of this State peculiar means for preserving good government and protecting the lives and property of the people of these cities. I think one fact suggested by the gentleman from Richmond [Mr. E. Brooks] shows the necessity that exists for peculiar laws in regard to cities. He referred to the charities of New York. Now, with that gentleman, I have a great admiration of this spirit of charity that manifests itself in these public and private charities that are to be found in the city of New York and in all Christian cities and countries. And yet, does not that gentleman know, and does not every intelligent person know that in this land the existence of the necessity of those charities arise from the prevalence of crime? There are but few persons, comparatively, in this land, who would need the charities bestowed by those institutions but from the fact of vice and crime. And, therefore, when he points to the charities of New York as an indication of the benevolence and morality and piety of that portion of the people, we say that by this very fact he concedes what we claim, that there is an aggregation of crime and vice in that city and its surroundings. I do not wish to make any invidious or odious comparisons; that is not my design or intent at all. I simply wish to refer to the fact, a fact which is known to all, that the peculiar circumstances of these cities demand peculiar means for protecting the people,

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and for governing these cities. I wish also to refer to the statement made in relation to the case of ex-Governor Morgan. The gentleman, [Mr. Brooks] tells us that the former mayor of that city only wished to do what Governor Morgan actually did; and he seemed to think it was a complete answer to the argument of the gentleman from Rensselaer [Mr. M. I. Townsend]. Now, the difference between what Governor Morgan did, and what the mayor of that city desired to do, was this: The mayor of that city said himself that he desired to send those arms forward; he desired it because he sympathized with the rebellion, as he said. He desired it—

Mr. E. BROOKS—If the gentleman will allow me, I made no such remark as to say that the mayor of New York did sympathize with the rebellion. That is an inference of the gentleman and not a remark of mine.

Mr. AXTELL—The gentleman misunderstood me. I say that the mayor of New York was an open sympathizer at that time with the rebellion. He had gone so far as even to propose to make New York a free city, to have New York secede on its own account. Governor Morgan surrendered those arms, or allowed those arms to be surrendered, to be sent forward, because there were other interests affected by it, not because he had any sympathy with the views of the mayor of New York, but because there was a large amount of property belonging to the citizens of this State that would have been ruthlessly confiscated by the Governor of Georgia. That was the reason, and I submit that there was no parallel between the cases at all. Governor Morgan, a loyal man, desiring to protect the interests of the State, considered it was best to allow those arms to be sent. The mayor of New York wished the triumph of the rebellion, and to aid the rebellion, and therefore wished to send them. Governor Morgan, for the reason I have stated, allowed those arms to be sent; but the mayor of New York, wishing the success of the rebellion, regretted that he had not the power to send them, and that he was held back from sending them. And I have no doubt that the action of Governor Morgan secured the property of citizens of this State. But if the mayor of New York had not been restrained by the police, those arms would have been sent forward, and the ships, belonging to citizens of the State of New York, would in all probability have been confiscated, as they did lay their hands on every article of property that they could that belonged to northern men. Another remark of the gentleman [Mr. E. Brooks] in regard to pugilism, attracted my attention. I refer now to his remark while contrasting the morality of the country and the city. He told us that these pugilistic encounters take place outside of the metropolitan police district, in that portion of the State where the State government has a more complete and direct control. If I understand the gentleman and those who act with him, they are objecting that the State has stepped in and assumed a direct control in these municipalities—this is the burden of their complaint. I suppose however that the State government has as complete and direct control within the Constitution over every portion of the State as it has in the country outside of the city of New York. Outside the metropolitan police district there is no more direct control exercised than there is in the metropolitan police district, and so I do not see the force of the argument or reference of the gentleman.

Mr. M. I. TOWNSEND—In the country we send pugilists to the penitentiary; but in the city of New York they send them to Congress. [Laughter.]

Mr. AXTELL—In referring to the mob of New York, the gentleman from Richmond [Mr. E. Brooks] alluded to other mobs. He referred to a number of other mobs that have occurred in the history of this country; and he used this language, or something like this language, "mobs that had not so much provocation," or "mobs that did not have the provocation that the New York mob had." Now, I would like to know what "provocation" that mob of New York had? I ask for information. At that time, at the time when the mob began, and for days before, I had been performing, with tens of thousands of others, long and weary marches and doing some fighting. We were startled while confronting the foe in our front in Virginia with the news that a great riot had broken out in New York; that they were burning women and children; that they were sacking houses; that they were without hindrance moving through the streets of New York and committing all sorts of crimes and depredations. And for some time after that I was where I could not get any direct information on that subject; and I own that to this day I have never heard what was the peculiar "provocation" of that mob, and I have yet to learn what it was.

Mr. E. BROOKS—Will the gentleman allow me—

Mr. AXTELL—I cannot give way, at present I cannot spare the time. I have never been able to learn that there was any peculiar provocation. I know that there was on the part of the government of the United States at one period of our history a violation of the great principles of liberty and the doctrines of the Declaration of Independence which did, in some instances, produce mobs, mobs however in which no lives were lost, or hardly a life was lost, mobs which even in their results showed the law abiding spirit of the people who believed in the doctrines of the Declaration of Independence. And it will be pointed at by historians and by political philosophers in the times that are to come as an instance—as an illustration of the law-abiding principles of the people throughout the northern States, that they did submit to the violation of every principle dear to them; that they did allow their State Houses to be put in chains; that they did allow the man-hunter on their soil; and that, even in their ebullitions of feeling, even in the swelling up of those principles of justice, which it was impossible to stifle, they did not sacrifice the miscreants who were doing the bidding of the slave-power under the authority of the federal government. This will be pointed to as an illustration of the respect for law in the hearts of the people—the loyal people of the great States of the North. There was no "provocation," so far as I understand, for the mob in New York. If

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there was I should like to be informed as to the nature of that provocation.

Mr. COLAHAN—I should like to ask the gentleman if he has had any experience in the sixth ward of New York, similar to that of the gentleman from Rensselaer [Mr. M. I. Townsend]?

Mr. BICKFORD—I believe the motion now pending—that of the gentleman from Steuben [Mr. Spencer]—to be the proper motion to dispose of this whole question; and I think it had botter prevail. If it prevails, the effect will practically be that the whole scheme, and all the reports on this subject will have to fail. I have but a few minutes, and I will take up the time until the adjournment in reading a few maxims which I think should govern in relation to this matter. They are in the form of axioms, and I think will be recognized by gentlemen around me. We have heard a good deal here about the great principle of self-government, and of local self-government; and I lay down, as the first axiom in relation to this matter, that we are here, members of this Constitutional Convention, for the purpose of framing a government for the State of New York—the whole State, and not for any portion of the State; we are here to frame a government for the whole people. I lay down, as a second axiom, that there is no right of local self-government except in the people of the whole State. No isolated portion of the people of this State can claim the right of self-government, and the only right of self-government which exists is in the people of the whole State. I lay down a third axiom: that the people of all parts of the State may rightly claim protection from the State in any and every part of the State. And I lay down another axiom resulting from that, that the people in any part of the State should not be remitted for protection to any local authorities merely. For instance, I, as a citizen of this State, have a right to go into any part of the State, and when there, have a right to claim that the strong arm of the people of the whole State shall be put forth to protect me, and that I shall not be remitted to any mere local authority to protect me. I lay down another axiom. A good deal has been said about comparing the cities with the towns. I say that the towns and counties in this State are held strictly under the control of the State. Every town and every county has such power and such authority, and no other, as the State chooses to confer. Another axiom I lay down is this: that the government is vested in the State, and not in any fragment of the State. Another axiom is that the Constitution of the United States under which we live, and which is the supreme law of the land, does not recognize any government inferior to that of the State. It recognizes State governments, and nothing lower. Another axiom is that the State has no right to abdicate the government of any part of its people, or its territory. It is competent, and it is its duty to govern all its people and territory, and it has no right to abdicate its functions. Another axiom is that all acts of government should be in the name of the people of the State—that is, by the authority of the people of the State. No act of government should be by the authority of the city of New York; but every act of government should be in the name of the people of the State, and by their authority. Other acts, not involving government, may be properly performed by local boards, or local officers. But if the act involves an act of government, it should be performed in the name and by the authority of the people of the whole State. Another axiom: the powers to be vested in communities that are subordinate to the State, are precisely such, no more and no less, as the gentleman from Fulton [Mr. Smith] has well said, as the people of the whole State, either in the Constitution or by laws constitutionally passed, shall see fit to confer. Again, in determining what powers should be or may properly be conferred on subordinate communities, the controlling considerations are, first, the public safety, and, secondly, the general good; and you have no right to consider any thing else. What is convenient, what may be desirable by the people of a particular locality, is not to control; it is the public safety; that is the supreme law. And by the public safety I mean the safety of the individuals composing the body politic of the State, of which the city is a part.

Mr. DEVELIN—If the gentleman will give way, I hold in my hand an invitation from the Governor and his lady to attend a party there to-night. I understand this invitation has been extended to all the members of this Convention, the members of the Legislature, and the military body which has been in session here for a few days. Under the circumstances, out of courtesy to the whole of us, who have, I believe, received invitations, and out of my consideration for the political interests of the majority of this Convention, if the Governor is to be the next Vice-President, [laughter,] I move that we adjourn until to-morrow morning at ten o'clock.

Mr. M. I. TOWNSEND—I move that the hour be four o'clock this afternoon.

Mr. LEE—What hour is mentioned in the invitation?

Mr. DEVELIN—"Mr. and Mrs. R. E. Fenton at home from eight to half-past eleven."

Mr. LEE—Then we can meet at seven—

The CHAIRMAN—The motion to adjourn is not debatable.

Mr. ALVORD—I rise to a point of order. It is two o'clock, and the Convention must take a recess.

The hour of two o'clock having arrived, the PRESIDENT resumed the chair and announced that the Convention would take a recess until seven o'clock P. M.

EVENING SESSION.

The Convention re-assembled at seven o'clock P. M.

Mr. ALVORD—It is evident, inasmuch as most of the members of the Convention absent themselves entirely this evening, that we will have no quorum in attendance. I therefore move you, sir, that we now adjourn until to-morrow morning.

The question was put on the motion of Mr. Alvord to adjourn, and it was declared lost.

Mr. ALVORD—I call the attention of the Chair to the fact that there is no quorum present.

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The PRESIDENT—If that point is raised, the Secretary will call the roll of delegates.

Mr. M. I. TOWNSEND—I rise to a question of privilege. The clock in this hall is ten minutes in advance of city time and of the time in my own city, and I do not believe that it is yet seven o'clock as counted by any other clock except this. The difference of time may be the cause of the inattendence of members at this time.

The PRESIDENT—The Chair would state to the gentleman from Rensselaer [Mr. M. I Townsend] that this clock must be his standard.

Mr. ALVORD—I withdraw my point upon which the call of the roll was ordered.

Mr. COMSTOCK—I renew it.

The SECRETARY proceeded to call the roll.

The name of Mr. Bell was called.

Mr. MERWIN—I desire, in connection with the name of my colleague [Mr. Bell], to state that he is detained at his boarding place by illness.

Mr. KINNEY—Would it be in order to move a division at this time?

The PRESIDENT—It would not.

Mr. VERPLANCK—I ask that the absentees be called, and I move that they be called five minutes from this time.

The PRESIDENT—The Chair does not regard that as a parliamentary motion.

Mr. BEADLE—I move a call of the house.

Mr. SILVESTER—I rise to a question of privilege. By the town time, I believe, it is now just seven o'clock.

The PRESIDENT—The Chair has already stated that that is not a question of privilege. This clock regulates this body.

The call of the roll having been concluded, the PRESIDENT announced that fifty-four members had answered to their names.

Mr. BEADLE—I made the motion for a call of the house, Mr. President, without any desire whatever to embarrass the proceedings of the Convention. I felt satisfied that it would show that there are almost as many members in attendance as were present at any time during the past week, during which we have done a great amount of business. I now withdraw my motion.

Mr. E. BROOKS—I suppose that by general consent we may now go into Committee of the Whole.

The Convention again resolved itself into Committee of the Whole upon the report of the Committee on Cities, Mr. RUMSEY, of Steuben, in the chair.

The CHAIRMAN announced the pending question to be on the motion of Mr. Spencer to strike out the first section; Mr. Bickford being entitled to the floor.

Mr. BICKFORD—At the time the Convention took a recess to-day I was very nearly through with the few remarks that I desired to make upon this subject. In addition to what I have already said, I wish only to say further, that if it is not the purpose of the people of this State to continue to govern every part of the State, we ought to apply to Congress to set off that portion of the State that we do not intend to govern in the future, and let them constitute a separate State by themselves. The State may be divided, and in that way, and in that way alone, can those portions of the State enjoy the privileges talked of here of "self-government." This concludes, I believe, the propositions which I desired to lay down here as axioms, and I submit, sir, that all the propositions I have laid down are self-evident truths, and that they commend themselves to the mind of every man on the mere statement, as containing their own proof. I wish to say one thing in reference to this matter of commissions for the city of New York, where it seems the principal trouble lies. The trouble, as will be seen on the statement, is not one which is without a remedy at present. It arises from this; not that the commissions are illy administered, not that the metropolitan district, or any other districts which are the subject of these commissions, is illy governed, but from the fact that for years past there has been a republican majority in the State, who have elected the Governor of the State and the Legislature of the State; whereas there has been a democratic local majority in the metropolitan district. This, and the uneasiness and conflicting political feelings attending it, have created the trouble. It may be, indeed, that the government of the districts subject to these commissions, has not been the most wise; it may be that there are great improvements to be made. But it does not follow that because there are improvements which experience has suggested and shown to be necessary, we should, therefore, in this Convention, do all the legislation on the subject of cities for twenty years to come. Let the evils that arise from time to time be remedied by the Legislature. At the present time there is a democratic majority in the House of Assembly. Very well, let them fix that matter up, let them make the required improvements, and I venture to say that if they will concoct a reasonable scheme, the republican majority in the Senate, and the republican Governor, will agree to it. If they will adopt a scheme of government for that district which will commend itself to the reason and common sense of the community, I apprehend that neither the Governor nor the Senate will manifest any opposition to it. At all events, let the democratic majority, in its wisdom (and they are mostly from that district), concoct a scheme which they think right, to pass it and submit to the Senate, and if it be at all reasonable, I am satisfied it will be adopted. This trouble, sir, is not without a present means of remedy. I apprehend that even the republican party are willing to concede that there may be improvements made in relation to these commissions. Complaints have been made that there has been too much disposition to employ republicans instead of democrats in the offices connected with the commissions. That may be true, but that is no argument against the wisdom of the system or against its continuance. I have nothing more to say at this time.

Mr. HARRIS—I am not disposed, Mr. Chairman, to struggle against the opinion that this Convention may entertain in relation to the merits of the article now under consideration. I assumed the duty with which the President of this Convention saw fit to honor me as chairman of

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this committee, with reluctance. It was not a matter that was in accordance with my own taste nor one to which I had given any very great attention; although I had even then decided opinions on the subject. I have brought to the consideration of the subject since that time the best powers of my mind and I have arrived at conclusions, in connection with the majority of the committee, satisfactory to my own judgment. I should be glad to see this article adopted. I believe that it is right, eminently right; I believe that it is wise, eminently wise. I should regret to see it rejected. The vote now impending taken is probably to be decisive of the fate of this article; and in that view it is to be more far-reaching and influential than any vote that has yet been taken in this body. I am encouraged to believe that we shall make a tolerably good Constitution. I believe that our work will be an improvement upon the existing Constitution; but I am very sure, sir, that if we reject this article and substitute nothing in its place which shall be satisfactory to the people more immediately concerned we seal the fate of our whole work. I am quite confident that it will be impossible to get a vote of the people of the State accepting the Constitution if this article shall be rejected. I regard that as a moral certainty. I admit, of course, that this should not be a controlling consideration with this Convention; and yet I think it should have some weight. If we can be convinced that this alone will save our work, and it is right in itself, then certainly there is no objection to its adoption. There is another reason why I desire that this article or something substantially like it should be adopted. I desire to take this subject out of the Legislature and out of politics. Sir, I think the Legislature ought not to be intrusted with this extraordinary power. Their exercise of it, for the last ten years, has been fraught with the most serious mischiefs. The corruptions of the metropolis have been transferred to the Capitol. The Legislature has been debauched by these influences and has become a by-word and a reproach throughout the country. Compare its reputation now with what it was before the system of legislation was entered upon, and any gentleman will be convinced of the demoralizing influence of the system. For this reason, sir, I have earnestly desired that something might be adopted in this Convention which should have the effect to put an end to this demoralizing system of legislation. Again, sir, I had hoped that this article would be adopted, and most of all, because it is right. This system of governing the city of New York is wrong in itself. It is vicious in principle, it is ruinous in policy. I should be glad, sir, to see this matter settled, settled upon sound republican principles, the recognition of the right of self-government in those portions of the State now subject to this system—a right which we all claim for ourselves. I claim the right to govern myself and to take care of my own affairs so long as I do not interfere with others. I claim that right for you sir, I claim that right for my friend, I claim it for my enemy, for every body. I claim it for the community in which I live, I claim it for the State in which I reside, I claim it for my nation. It is an inherent right, and any interference with it must always be pernicious in its consequences and ruinous to the party that adopts it. I desire to get rid of it as a political element. I think it is an incumbrance upon any party that has to bear the responsibility of it, too great an incumbrance for the party to which I belong and whose success I desire to promote. If you go on with this system, the time is not far distant when the city will rule the country rather than the country the city. We ought to be rid of it. But, sir, I am not going to struggle against the sentiment of the Convention on this subject. If they choose to strike out this article, as they seem inclined to do, I shall have no hope myself of the adoption of our work. I believe that the votes that will be controlled by this one consideration will be decisive of its fate. Before I sit down I want to say a word to my friend from Rensselaer [Mr. M. I. Townsend], and to say a word for him. I have a very warm attachment to that gentleman. There has been an unbroken friendship between us for the last thirty years. I do not know that I ever had in the State a more decided or a truer friend than he, and nothing that has occurred here or that will occur shall interrupt that friendship if I can avoid it. I admire him for his many good qualities and virtues. He has undertaken to administer to me a pretty severe castigation. Perhaps I deserve it; but my conscience acquits me. I have done according to the best of my ability what it was my duty to do in this important matter. That gentleman is not very apt to give those who are opposed to him much quarter. He is a descendant of the Puritans, proud of his Puritan blood, and I have always regarded him as the best specimen of the New England Puritan that I had ever met. He is an embodiment of my idea of what the New England Puritan was two hundred years ago. His ancestors persecuted my forefathers and drove them out of New England to Rhode Island [laughter]; but I do not charge that to his account at all, and he and I will have no quarrel about it. The Puritans thought that they at last had reached the very truth, and that any body that opposed them was guilty of heresy and that they not only had the right to persecute him, but that it was a sacred duty to do so. Now, I submit to this Convention whether the gentleman does not exhibit the same peculiarities of character, the same spirit of intolerance, which distinguished his Puritan ancestors? But I will have no quarrel with him on that account—

Mr. M. I. TOWNSEND—If the gentleman will allow me, I will state that the ancestor to whom I claim most resemblance, Miles Standish, was as pugnacious as I am, and never belonged to the church. [Laughter.]

Mr. S. TOWNSEND—According to history, the ancestors of the gentleman from Rensselaer drove out of New England not only the forefathers of the gentleman from Albany [Mr. Harris], but certainly a large portion of my and most of his own relatives. [Laughter.]

Mr. CONGER—I must detain the Convention. I must be permitted to express the grounds of surprise I feel at the disposition manifested to strike at the whole of this report by refusing an affirmative

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or approbative vote to the first section. Consistency, sir, is said to be a jewel, doubtless not to be paraded or flauntingly worn. But in deliberative bodies more eminently than in the case of individuals, it is an indispensable attribute to maintain self-respect and to secure just commendation. Let us consider then what we have done hitherto in the earlier part of our proceedings. We have refused to give to the Legislature power of control over certain internal affairs of towns and counties, and we have declared by general provisions to be incorporated into the revised Constitution that the boards of supervisors shall have exclusive control over certain matters which we have designated; and we have refused to allow the Legislature to interfere with or to exercise concurrent jurisdiction with these functions of the boards of supervisors. So that, for example, to take the case of my honorable friend from Rensselaer, who lives in the city of Troy, the internal affairs of his county cannot be touched by any action of the Legislature. But that which more immediately pertains to his local and private interests as a citizen of Troy is to be subject to the same mutations of legislative will as have hitherto disgraced the action of the Legislative body if the measures he now so earnestly advocates are adopted. Now, here is an anomaly that is worthy of a few moments' consideration. What are those great rights of self-government pertaining to towns and counties which it seems are so isolate and separated from the rights of cities that the Legislature may not touch the one and may strike down the other? If my memory serves me right I heard this morning the gravest imputation upon the doctrine of self-government as applicable to cities. That doctrine was scouted as the great primal heresy which threatens to invade all constitutional government not only in the State but throughout the Union. With what consistency, however, can those who have heretofore given their votes to grant to towns and counties certain rights and functions of self-government irrespective of legislative control, denounce the measure? Is there any thing in this article that is so obnoxious to censure that the very sniff of the word mayor shall excite the indignation of this dignified body and induce them to turn back upon the plan and principle of action they have heretofore advocated and sanctioned? The Convention will remember that it did not hesitate to make the registers of deeds for the cities of New York and Brooklyn constitutional officers, and on suggestion of the gravity of the interests involved, this assembly also made the register of the county of Westchester a constitutional officer. Is there any thing in the office of mayor of New York or Brooklyn or of other cities that is so worthy of contempt, so little entitled to the consideration of this body that the office as such and by name is to be refused a constitutional status? How can this thing be, when it must be conceded on all hands that the office of mayor of the city of New York is one of the oldest offices, historically speaking, known to our State? Gentlemen forget that it was from the first beginnings of wisdom, of moderation, of sound judgment, and practical sagacity manifested by the citizens of the ancient New Amsterdam and the early colony of the Duke of York that we derived those notions of government and independence (clustering about commercial prowess and municipal liberty) which finally culminated in the adoption of the Constitution of the State and led to the ratification of the Constitution of the United States. Now, sir, I am not one of those who, believing in the historical value of the early charters of the city of New York, have ever carried the doctrine so far as to say that those charters were protected by any Constitution to the extent that the Legislature could not modify the powers conferred by them, or seek to increase the functions which those charters were designed to secure. I am not here to advocate the doctrine that these charters contain political powers which could not be disturbed by the action of the State government. But I beg to call attention to the singular protection they have hitherto enjoyed. When the Constitution of 1777 was adopted, so sacred was the sense of justice that existed at that day that they added, as almost its final clause, that all charters theretofore granted should be sacred and incapable of perveraion or annulment even by the sovereign law then ordained. Need I state that the same security is preserved if any thing in stronger terms in the Constitutions of 1821 and 1846, I take it to be a matter of great and cardinal importance whether you seek to destroy a chartered right, or merely seek to give it the assistance that it is necessary it should receive] from the superior wisdom and power of the Legislature; but I do not propose at this late hour to detain gentleman in such a discussion. My memory enables me to bring out a fact which I deem of no little consequence. I happened to be in the Legislature in 1853 when there was great excitement, not only in the city of New York but throughout the State in regard to the corruptions of the local government of that city. And when a measure was proposed for the relief of the difficulties under which New York then suffered, what was done by the Legislature? Did they seek by a mere barren assertion of power to contravene the rights of the people in their corporate capacity, those rights of local self-government which they had enjoyed for nearly two centuries? I will not moot the question now whether they had a right to do it, but what was the fact? Why, sir, they proposed a new charter for the city, to take effect on its receiving a majority of the popular vote in that city: and I say that it is a necessary inference that by that act the Legislature recognized the right of the people of New York to certain functions of self-government, and that we are precluded at this late day from undertaking to set up the right of the Legislature to do any similar act, independent of the suffrages of the people of the city of New York. If the Legislature had the right by the exercise of a mere barren power to subvert those old franchises, why did they not exercise that power? Or to give this matter more pointed expression, and with reference to our immediate subject, suppose the Legislature at this session, or any subsequent session, had undertaken to abolish the office of mayor of the city of New York, do you suppose that they

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would have had the right, under the pretense of a special sovereign power to take away from that locality the right to select or confirm its own mayor, a right which has existed always in that locality under the charter, and which has never been denied, but always approved by the Legislature hitherto.

Mr. VAN COTT—Under which charter does the gentleman mean?

Mr. CONGER—Under either of the charters.

Mr. VAN COTT—Will the gentleman specify either of the charters?

Mr. CONGER—I suppose that the charter of 1730, commonly known as Montgomery's charter, confirmed the rights of the citizens in the Dongan charter.

Mr. VAN COTT—The right to elect a mayor?

Mr. CONGER—No, sir; to have a mayor, whether elected by popular vote or not; the right to have and possess a mayor in the exercise of that high executive function. But, as I said before, I eschew the constitutional question. I do not think it is worth while, or necessary, to press it on this occasion. That is a question that may be reserved more properly for the courts. But I will say to the Convention, I will say to my honored friend from Fulton [Mr. Smith], who read the opinion of Judge Denio in a celebrated case, that there is not a word in that opinion which would imply the right of the Legislature to abolish the office of mayor, or to abrogate the chartered rights of that city in this particular. The general expression of opinion given by Chief Justice Marshall in the interpretation of the Dartmouth College case, that a right under a charter did not confer political rights absolutely, and that those rights might be modified or altered by the Legislature, has but little to do with the chartered right of having that office of mayor in the city.

Mr. SMITH—Will the gentleman permit me to put a single question to him?

Mr. CONGER—Certainly.

Mr. SMITH—Does not that case to which he refers hold distinctly and explicitly, that all the rights and powers of the corporation of the city of New York are the gift of the Legislature, held in subordination to the Legislature, and that the Legislature has the right to modify and change them as they think best?

Mr. CONGER—No, sir; I apprehend that Judge Denio never uttered such a sentiment as that.

Mr. SMITH—If that is not the purport of that opinion, then I cannot correctly read or appreciate an opinion.

Mr. CONGER—I apprehend that Judge Denio never uttered such a sentiment, because that learned judge, after reading the history of these charters, knew too much of their origin to say that all these rights came from the Legislature, or that the right, as in the case I put, inhered in the Legislature. I beg my honorable friend and the committee to remember that I do not pretend to say that the city, under its charter, had rights to tax, or had certain other political rights which were always reserved under the charters granted by the Parliament or Crown of Great Britain, neither do I claim for the city, a right to tax independent of legislative sanction, for that has not been claimed by any one, and I should be the last to urge it. But I put it in this individual case because of the feeling manifested in the committee. I put the point just here—has the Legislature the right to abolish the office of mayor without the assent of the people? Now, I do not think it is wise, either in the present discussion or in the future handling of this question, to institute any sort of conflict between the city and the State governments, and I do not favor questions or animosities leading to any such divisions or contests. On the contrary, I say that to my mind it is our duty to close up this gap if possible, and to establish by some general provision of law a sufficient confirmation of those organic rights which the people of the city of New York enjoy, and by general provision to extend those local rights of self-government under general law, to the other cities of the State. Nether do I think that it is wise to look at the question in a partisan light. It may answer a present purpose, for certain political ends, to seek to give certain offices, by way of gift or emolument, to certain persons who could not get those offices from the people of the locality; but if you persevere in this method, without establishing any general provision of law, and say to the people of that city, "you shall be bound hand and foot under the will of the sovereign Legislature," you will awaken a feeling in the city that will lead to untoward results, and I, for one, should deprecate the occurrence of any thing which should lead to such dire results. I am too deeply interested in the order and welfare of the city of New York to desire to have this agitation go on, and I ask gentlemen, even if the proposed action suits their present purpose now, to consider, on the mere hypothesis, that there shall be a revolution in public sentiment, and the party now in power in this State, shall, in a year or so, cease to have the power to appoint to these offices, and such patronage should come from another and opposite source, whether there will be an alleviation of the evils which are now existing, and which gentlemen seek to cure? When parties get into power, who have long been deprived of it, and who feel that their rights have been infringed, are they always so scrupulous in the selection of their agents to execute their will? You, and I, and all of us, must see that it is neither wise nor expedient to undertake to chafe the fury of a people deprived of rights, and in a way which a prudent man would abet or justify. Now, sir, if there is any one consideration which should have greater weight in this Convention than another, it is this, that the next twenty years in the city of New York are not doomed to follow the rule of even the last twenty years, although we have seen in that time the most enormous strides in the population and wealth of that city; and the same is true of nearly all the cities in the State. How have our villages and cities grown? Before the next twenty years shall have rolled over our heads half the villages in the State of New York will claim to be cities, and to exercise chartered rights as cities. The whole tendency of our population is to concentrate itself in these large vitalizing centers, whether villages or cities. But, however it may be in other parts

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of the State, remember that the growth and progress of the cities of New York and Brooklyn cannot be checked, and remember that you have in those cities one-third of the whole population of the State and one-half of its taxable wealth; and then go home to your constituents if you can, with any show of consistency, and say—"We have taken good care of the towns and counties, but we have left this great district, destined to contain nearly one-half of the population of the State and fully three-fifths of its taxable wealth, to be held in the grasp of legislative power and plunder." Must I remind the Convention, Mr. Chairman, that in the earlier sessions of this body there was no topic so frequently brought out in its debates as the corruptions and the venalities of the Legislature? I need not say sir, that I did not indulge in censorious strains upon that body; I rather sought to explain how, under the unwise distribution of power as between the two bodies of the Legislature, the Senate not being a conservative body, but just as dependent upon popular caprice as the Assembly itself, that out of that defect these evils have grown. Having taken that position, I feel that I can with propriety remind gentlemen present here to-night that they have, not only in their discussions but by their votes, gone far to give their sanction to the popular impressions in regard to the course of the Legislature. Do you mean still to turn over the rich city of New York to a body of men who, if they do not sell offices for gold to undeservers, sell franchises and grants that are worth more than all the offices of the city and the State together? Do gentlemen mean to say that the right of self-government can be so illy lodged in the city that men must come up to the Legislature, some on one side and some on another, with thousands of dollars in their pockets, to be competitiors to get this or that grant of railroad or other franchises? Can the city of New York no longer be protected from this rapacity of country members combining with the shameless betrayal of trust, which the representatives of the people of the city are said to manifest? Now, Mr. Chairman, it is unnecessary for me to call your attention again to what has been stated on this floor, that the taxes of the people of the city of New York have been frequently increased thirty per cent if not more, by act of the Legislature, for the purpose of carrying out the special desires or whims of some of the favorities of the legislative majority. Does my honorable friend from New York [Mr. Hutchins] and other gentlemen who represent here, or have the right to represent, such mighty interests, either of real or personal property, pretend that it is wise to continue this state of things, or do they fail to see that in refusing to give their assent to some general or organic provision of law by which the rights of citizens in these cities may be recognized, they leave them at the mercy of all the myrmidoms of corruption scattered throughout the State. These gentlemen from New York should remember that they have to pay their share of the tax which goes as plunder into the pockets of these publicans. But we are told sometimes, Mr. Chairman, that the property interests in the city of New York are antagonistic to the political interests of the majority. Well, now, if that be so, why should you fail to take cognizance of the fact and provide a suitable remedy? Will gentlemen pretend that this Convention was called on some mere general scheme of betterment, simply in pursuance of the organic provision which required the Convention to sit? Was there not a loud public cry for reform in certain particulars? Some will say that the people of the State of New York cared for nothing but a reform in the judiciary; yet I cite the voice and the deliberations of this Convention, heretofore expressed and held, to prove that the people of the State were deeply interested in checking the corruptions of the Legislature. Moreover, I take it to be an undeniable fact that one great source of complaint under the Constitution of 1846 was this very evil of conflicting interests in cities, as between the property interests—which my friend from Rensselaer [Mr. M. I. Townsend] called the "law abiding interest"—and the element of population which he described as "lawless," if not worse. I confess that I cannot see why this Convention should adjourn without paying some attention to that cry. Is the cry of a million and a half of souls coming from that quarter of no account, either in your deliberations or in your votes? Is the interest of one-half of the taxable property of the State of New York of so little moment that the desires expressed by her tax payers in the city of New York—every owner of property, personal or real, that the taxation may be abated and corruption checked—is that cry not entitled to consideration, worthy of some remedy to be applied? But I will conclude, Mr. Chairman, very briefly, after I have drawn the attention of the committee to the fact that, if this first section which is sought to be voted down as a test of the sense of the Convention on the propriety of exercising political power over the subject, were yet to be examined critically, there can be but two exceptions taken to it by the most astute minds in this body; one is as to the use of the word "chief" as qualifying the executive power vested in the mayor, and the other as to the tenure of his office. Take out the words "chief," as extending, if you please, his "executive power," and take out the number of years for which the mayor is to serve, and you have got the fact and law, precisely as they now stand. Now, I ask gentlemen, is it wise, or becoming the consideration of a body that has been in session five or six months, to answer the public demand for the correction of an evil of this nature, on a mere quibble on the word "chief," as qualifying the executive power, or on the term of office whether for one year or three years, by a vote taken for the purpose of destroying the whole product of the labor, and skill, and industry of the honorable committee which you have appointed to investigate this subject? The thing, as it strikes me, if I may use the term, is preposterous; because, although you have one or two minority reports, there is no modification proposed of an essential character to the first article, by either, except that the minority report headed by the gentleman from New York [Mr. Opdyke] proposes that the term of this office should be for two years, and the report of the gentleman from

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Kings [Mr. Murphy] urges a modification of power. If I understand the gentleman from New York [Mr. Ordyke], who spoke this morning, and who has doubtless written the minority report to which I have alluded, he also fixes the chief executive power in the cities in the mayor. It is proper, sir, in this connection, that I should direct the attention of this committee to the folly evinced in the departure from the great general principles of local administration and government made by the Legislature of 1853 in the amended charter of the city of New York, and the greater folly, as it seems to me, which was exhibited by the people when, by their votes, they ratified that charter. Under the old charter the executive power of the city was vested in the mayor; under the new charter the executive power was distributed and scattered through seven departments, and we realized literally the declaration of the parable in the Scripture that, after having garnished and swept the house, we had let in seven devils, instead of one. I say, understanding fully the import of the assertion made by me at this time, and in this place, and I say it with the most entire sincerity, that such was the effect and the result of this legislative reform given to the city of New York. Prior to 1853, although there had been some petty stealings by the common council in the matter of the Fort Gansevoort and other properties, although there had been no inconsiderable corruption just beginning to show its head—although taxes were then supposed to be intolerably heavy, because of the rapacity with which this city property had begun to be taken—taken for the use of adventurers and unprincipled speculators—yet, immediately after the institution of these seven departments, there was not a man in the city of New York who owned property but soon felt how terrible it was to be under seven masters instead of one. I knew a case arising in the administration of the street department. A rescript was issued in reference to certain parts of the city, that all the pavements and sidewalks should be taken up and new flagging laid. What was the fact that lay behind that rescript? That the gentleman at the head of that department, with his confederates, had bought up or forestalled all the flagging there was in the market, and that, too, at a season of the year when it was impossible to get more, and he thus made a very fine speculation out of the power conferred upon him to regulate the streets and sidewalks of the city of New York. I know something of this, sir, from my own private knowledge, and private experience, gained as a tax payer of the city. This, if it were an only instance, may be deemed as a very light affliction, but all such enormous burdens, growing with its growth, and strengthening by the facilities left to corruption, must lie on the city of New York as long as you refuse them an efficient city government, with a head clothed with ample power, yet checked by the just obligations of his vast responsibility. I hope the committee will pause and consider; I hope it will not be carried away by the animadversions too unkindly passed on the political course of other gentlemen in this Convention whom we have honored with high and important functions as members of this committee. I hope that my honored friend from Rensselaer [Mr. M. I. Townsend], whose original Puritan ancestor, as he says, was not a member of the church, will so far remember the rules of religion and sound morality as to give to the people of cities the same measure of independence, and the same rights of self-government, not absolute, but restrained within right and reasonable limits, and with just constitutional safeguards put over them, as he will give to his fellow citizens in the county of Rensselaer, or as he will give to my fellow citizens in the county of Rockland.

The CHAIRMAN announced the pending question to be on the motion of Mr. Spencer to strike out the section.

Mr. VERPLANCK—Before the question is taken, Mr. Chairman, I desire to say a few words to the committee. The motion is to strike out the first section of the report. That section provides that—

"The chief executive power in cities shall be vested in a mayor who shall be elected by the electors of the city, and shall hold his office for three years. He shall take care that the laws and city ordinances are faithfully executed. He shall receive, at stated times, for his services a compensation to be established by law, and which shall neither be increased nor diminished during the period for which he shall be elected. He shall not receive during that period any other emolument from the city. He shall hold no other office and shall be ineligible for the next three years after the expiration of his term."

Without attempting to amend the section of the report of the committee or to correct what any member may deem to be wrong in the section, the motion is made to strike out the entire section, and I suppose we are to regard an affirmative vote on this question as disposing of this subject, because most of the other sections the committee have reported are based upon this first section. What is it that gentlemen object to, so far as this section is concerned? Do they object that the mayor is to be the chief executive officer of the city? He always has been the chief executive officer of the city, the officer in the city who executes the law; so that there can be no difficulty here. What next? "He shall hold his office for three years." In reference to that there may be some difference of opinion. Some gentlemen may think this term of office should not be more than one or two years, instead of three years, as recommended by the committee. The only other portion of this section about which there can be any dispute is the proposition that the mayor shall be ineligible for the next three years after the expiration of his term. I desired, sir, to call the attention of the committee to the effect of the vote to be taken, and while I am up I hope the committee will pardon me for saying a few words in reference to the report under consideration. The object of the report of the committee is to do precisely what the Constitution of 1846 undertook to do—nothing more and nothing less. The Constitution of 1846 provided that city, village and town officers should be elected by the people of the respective cities, towns and villages; and it was further provided that if any office after that time should be created, the office

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should be filled by the electors of the city, village or town for which the office was created. Now, by ingenious legislation and, as I think, mistaken judicial decision this provision of the Constitution was set aside, and all that the report of the committee proposes is to carry out in unmistakable words what the Convention of 1846 intended to accomplish. What is that? Why, to declare that the several divisions of this State hereafter shall be counties, towns, cities and villages, and that no other local divisions or districts shall be made, and thus place the matter beyond the reach of ingenious legislation. How did the Legislature get round the Constitution of 1846? As they had no power to take away the election by cities of their officers, they devised a system of forming new divisions, which they called districts, and claimed that the Constitution of 1846 did not apply to such districts. New York, Kings, a part of Westchester, Richmond and a part of Queens counties were formed into a new division and called the metropolitan police district. Then Albany, West Troy and the village of Cohoes were made the capital police district, to which Troy, the Central railroad between Albany and Schenectady and the city of Schenectady were afterward added. The march of usurpation is ever onward, and its next step removed from the citizens of my own city of Buffalo their right of self-government. The city of Buffalo, the town of Tonawanda, and the town of Wheatfield in Niagara county were organized into a police district with the high sounding name of "The Niagara frontier police district." The law provided that the town of Wheatfield might have two policemen, and for their payment by that town. There never has been a policeman appointed in the town of Wheatfield, and the town has never paid one dollar for any such purpose. The provision of the Constitution of 1846 was in the case of the Niagara frontier police district evaded only on paper—

Mr. M. I. TOWNSEND—Will the gentleman from Erie [Mr. Verplanck] allow me to call his attention to this fact. He speaks of the device to get around the law of the State and the Constitution, providing that all officers who should afterward be created should be elected. I think the gentleman has fallen into an error. If he will read the second section of the tenth article he will find it has this language, "All other officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed as the Legislature may direct."

Mr. VERPLANCK—Undoubtedly the whole scope and meaning of that article in the Constitution was, and the debates will show it as well as the letter of the Constitution, that the cities should have the right to select their local officers.

Mr. DEVELIN—In answer to the gentleman from Rensselaer [Mr. M. I. Townsend] I will state that Judge Denio, in delivering the opinion in the case of the People *v.* Draper, in which this matter was decided, declared that the office of commissioner of police was an office that had existed before the Constitution of 1846 was adopted, and although it was called by another name, it had the same power as the previous office had; and Judge Denio used this phrase: "This court looks at the substance and not at the form, therefore we decide that this office having existed before the Constitution of 1846, and as the Legislature has increased its jurisdiction by adding the counties of Westchester, Kings, a part of Queens and Richmond to New York, thus making a new jurisdiction which did not exist previous to the Constitution of 1846, therefore we decide that this law is constitutional." It was by a trick that these counties were added, to escape the evident view of the framers of the Constitution of 1846. The idea of that Constitution was to decentralize the power. I appeal to the members of this body who were members of the Convention of 1846, Mr. S. Townsend, Mr. Harris, Mr. Murphy, and Mr. Bergen, if it was not the intention to decentralize and take away power from the city of Albany and give it to the localities. Against the spirit of that Constitution this decision was made, and it was made because an offensive officer was mayor of New York at the time, and not on the merits of the matter at all.

Mr. VERPLANCK—We have had the confession of the gentleman from Steuben [Mr. Spencer] who made this motion to strike out the section, that he was a member of the Legislature when the metropolitan police bill became a law, and although it was urged and carried upon party grounds he refused, as one of the party, to vote for the bill. It is commonly believed that the metropolitan police bill and the capital police bill and the Niagara frontier police bill were all conceived for party ends, and were passed to subserve the interests of party.

Mr. M. I. TOWNSEND—If the gentleman takes that position I say that I deny it most thoroughly. I deny it not only for myself, but I deny it for the gentleman from Albany [Mr. Harris]; and he and I were the two fathers of the measure.

Mr. DEVELIN—You were twins. [Laughter.]

Mr. VERPLANCK—I do not propose to have any controversy with my friend on this subject, because if I wished a quarrel with him I would have greater cause in remarks he has made to-day.

Mr. HUTCHINS—I thought I heard the gentleman from Richmond [Mr. E. Brooks] say that he voted for this bill because from twelve to fifteen thousand of the respectable citizens of the city of New York, irrespective of party, said that the old police was corrupt, and there was a necessity for the measure.

Mr. E. BROOKS—The gentleman must remember that when the original police bill was introduced, it was intended to apply to the city of New York exclusively. The whole intent of the petitioners was to secure a change of the police administration of the city and county of New York. When it was found that such a law would be unconstitutional as applied to that precise locality, then came the time to annex these agricultural districts and other counties to the city and county of New York.

Mr. HUTCHINS—That is not the point. The point made by the gentleman from Erie [Mr. Verplanck], was that the metropolitan police law was passed as a partisan measure.

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Mr. VERPLANCK—I believe that to be the fact, and I quoted the statement of the gentleman from Steuben [Mr. Spencer], who was a member of the Legislature of 1857, which passed this act, as evidence of that fact.

Mr. HUTCHINS—Then I say that one of the fathers of the measure — the gentleman from Richmond [Mr. E. Brooks]—who was at that time a member of the State Senate, said last night that it was not a partisan measure.

Mr. M. I. TOWNSEND—The gentleman from Erie [Mr. Verplanck] says that he does not wish to have any quarrel with me. I certainly do not wish to quarrel with him because he carries too much weight for me. [Laughter.] It was the gentleman himself who looked me in the face and said that it was not denied that the capital police law was instituted as a partisan measure. The gentleman called upon me to admit or deny it, or I should not have said any thing if he had not addressed himself to me; and having done so I could do no less than to reply. I would not be uncivil to the gentleman at all, in any respect, or have any controversy with him. He discussed the question from his side, and I from mine.

Mr. VERPLANCK—I did not challenge the gentleman from Rensselaer [Mr. M. I. Townsend] to reply. I may have looked at him, because it is pleasant to look at his pleasant face. [Laughter.] I know in reference to the metropolitan police bill that it was understood to have been introduced as a party measure and for a special purpose. I know after the bill had passed, when the officers came to be appointed under it, to prevent its being a party organization, it was arranged by a compromise, that of the four commissioners appointed under that bill two should be democrats and two republicans.

Mr. HUTCHINS—Allow me to correct the gentleman from Erie [Mr. Verplanck]. That bill provided for five commissioners. There was no agreement, no arrangement of any kind, such as is stated by the gentleman. They were all appointed from the republican party, all five. I believe my friend from Richmond [Mr. E. Brooks] voted for them, for I recollect that Mr. Cholwell was recommended by him as a member of the board and was appointed at his suggestion.

Mr. E. BROOKS—The gentleman [Mr. Hutchins] is not altogether correct. The mayors of the cities of New York and Brooklyn were also members of the metropolitan police board.

Mr. HUTCHINS.—They were *ex officio* members.

Mr. E. BROOKS—Yes, sir; so that both of those gentlemen being democrats and members of the board according to law, the board was not composed entirely of republicans.

Mr. HUTCHINS—The board of commissioners consisted of five gentlemen who were appointed as republicans—Mr. Cholwell, one of them, being supported by the gentleman from Richmond [Mr. E. Brooks], and the mayors of the two cities as *ex officio* members.

Mr. E. BROOKS—Mr. Cholwell was not appointed as a republican.

Mr. HUTCHINS—Well, he was an American.

Mr. POND—I would like to ask the gentleman from Richmond [Mr. E. Brooks] a question if the gentleman from Erie [Mr. Verplanck] will allow me.

Mr. COMSTOCK—I rise to a point of order. This discussion is not pertinent to the question under consideration.

The CHAIRMAN—The point of order is well taken.

Mr. POND—Is a question that I have not yet asked declared to be out of order because it is not pertinent? [Laughter.]

The CHAIRMAN—The side discussion thus far has been out of order.

Mr. POND—My question is—

Mr. COMSTOCK—I hope that the Chair will enforce its decision.

The CHAIRMAN—The Chair cannot yet tell whether the gentleman's question is in order until it has been asked.

Mr. ALVORD—I rise to a point of order. When a gentleman is speaking and another gentleman interrupts him by a question, a third person has no right to rise and ask the second person a question.

The CHAIRMAN—The point of order is well taken.

Mr. POND—I presume so. I have never known a gentleman to rise but what the gentleman from Onondaga [Mr. Alvord] raised his point of order.

Mr. RUMSEY—The point of order is well taken.

Mr. POND—Then I ask the gentleman from Erie [Mr. Verplanck] if he will ask the gentleman from Richmond [Mr. E. Brooks] [laughter] if both parties in the city of New York came to the Legislature agreeing that the old system of police of the city was defective and should be changed, what they would have done had the Constitution of 1846 been precisely as it is now proposed to make it, and where would they have found their remedy?

Mr. VERPLANCK—Of course the gentleman from Saratoga [Mr. Pond] does not desire to have me answer that question?

Mr. POND—I should like to have it answered by somebody, because on the answer to that question my vote may depend.

Mr. VERPLANCK—We know that for several years the police commissioners of the city of New York consisted of two from each party, and that they so remained until a vacancy occurred by the expiration of the term of Mr. McMurray, that then the republicans changed the board into a political board by putting a republican in the place of Mr. McMurray.

Mr. DEVELIN—It was the Legislature.

Mr. VERPLANCK—It makes no difference how it was changed. It was changed by the republican party, so that they had in the board three republican members to one democrat. So far as the Niagara frontier police bill is concerned I know that it was introduced and passed through the Legislature as a partisan measure, and as there are gentlemen here who were here at the time of the passage of that bill, I challenge contradiction. The three police commissioners of the Niagara frontier police district, who were appointed under that bill by the Governor and Senate, were all republicans. A vacancy occur-

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red recently by the resignation of one of the commissioners, and that vacancy was filled a few days ago by the appointment of a republican. I have no fault to find with these commissioners. They are highly respectable gentlemen. The fault is in the system, The people of Buffalo are entirely competent to select their own local officers, and the act taking from them the power to do so is in derogation of their rights. It is said that the new police is much more efficient than the old. Sir, inasmuch as the expense of the new police is greatly increased beyond the expense of the old, I do not see why it should not be more efficient. Who doubts that, with the mayor at the head of the police, with the same disbursements for the police now made, we would have as great efficiency as we now have under the police commissioners? The committee, in reporting in reference to the mayor and his powers, have carried out the views of committees from New York and Brooklyn, and with one single exception so far as my memory serves me, every body, republican and democrat, insisted that the mayor should have these powers, and that exception is my friend from Kings [Mr. Murphy] who doubted the propriety of giving such extensive powers to the mayor. But every body consulted said: "You must have responsibility somewhere. What we want is responsibility. You should give these powers to the mayor, and make him responsible for their proper exercise." Mr. Chairman, it is somewhat humiliating to the citizens of a portion of the State that they should be obliged to submit to some conditions that the rest of the people are not subject to, and that they cannot be intrusted with the management of their own affairs and the appointment of their officers. It is the same feeling that some of our Canadian brethren have in reference to the appointment of their Governor. An able and distinguished Canadian said to me a few days since, "I do not complain that we have not good governors, but what I complain of is that we have no voice in making or unmaking them."

Mr. GRAVES—If the gentleman will give way for a moment I will make a suggestion. It is quite evident that we shall not be able to close the discussion upon this subject to-night. Myself and others desire to submit our views upon this question, but I do not desire to submit mine to an uneasy committee who are quite anxious to respond to the invitation to visit the Governor this evening. Believing that we shall not be able to close this discussion to-night I move, without desiring to interfere with the rights of the gentleman from Erie [Mr. Verplanck], that the committee do now rise, report progress and ask leave to sit again.

The question was put on the motion of Mr. Graves, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. RUMSEY, from the Committee of the Whole, reported that the Committee had had under consideration the report of the Committee on Cities, had made some progress therein, but not having gone through therewith had instructed their chairman to report that fact to the Convention and ask leave to sit again.

The question was put on granting leave to sit again, and it was declared carried.

Mr. DEVELIN—I move that the Convention adjourn.

The question was put on the motion of Mr. Develin, and it was declared carried.

So the Convention adjourned.

FRIDAY, January 24, 1868.

The Convention met pursuant to adjournment at ten o'clock A. M.

Prayer was offered by Rev Dr. WYCKOFF.

The Journal of yesterday was read by the SECRETARY and approved.

The PRESIDENT presented a letter from Richard McHenry, transmitting a communication from Peter Cooper, relative to the government of cities.

Which was laid on the table.

Mr. COLAHAN presented three memorials from citizens of Wayne, Monroe and Cattaraugus counties, on the subject of a medical board.

Which were referred to the select committee on that subject.

Mr. FERRY, from the standing committee on contingent expenses, made the following report:

The committee to whom was referred the resolution of Mr. Curtis, asking that a copy of the Debates of this body be sent to the Secretary of the Georgia Constitutional Convention, beg leave to report that they are informed by the mover of said resolution that he contemplated sending a copy of the entire proceedings of the Debates only.

Your committee therefore recommend that the Secretary of this Convention send to the Secretary of the Constitutional Convention of the State of Georgia a complete copy of the entire proceedings of this Convention, such copy to be taken from the number appropriated to the Assembly Library.

E. E. FERRY,
January 24, 1868. *Chairman, etc.*

The question was put on agreeing to the report, and it was declared carried.

Mr. AXTELL—I had a report of the select committee of which I am a member, designing to present it this morning. It was left in my drawer yesterday. It is not there now, and it is not to be found, and for that reason I do not present the report this morning; and if any gentleman finds a stray report I should like very much to have it returned to me. [Laughter].

Mr. VAN CAMPEN offered the following resolution:

Resolved, That when this Convention adjourns to-day it adjourn until Monday evening at seven o'clock.

Mr. CASE—I move to amend by saying ten o'clock to-morrow morning.

Mr. ALVORD—I rise to a point of order. We do adjourn until ten o'clock to-morrow unless we adopt this resolution; and the proper way is to vote down this resolution.

The PRESIDENT—The point of order is well taken.

Mr. VAN CAMPEN—We have never been able to have a quorum here on Saturday and Mon-

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day during the sittings of this Convention. It arises from the fact that gentlemen have business that must of necessity be attended to. They stay as long as is possible, and as Sunday comes between those days they take Saturday and Monday for their business. I have a very grave objection to the manner in which we went forward with the business last Saturday and Monday, with only twenty-five or thirty members of this Convention present. If we must sit to-morrow and Monday, as we did last Saturday and Monday, I feel it my duty to give notice that I shall take advantage of the conditions which will arise, to adjourn from day to day.

Mr. HAND—We have consented to do business here without a quorum from day to day, and it is rather too late to impose that check upon the proceedings. I hope no more time will be wasted, but that we shall avail ourselves of every favorable opportunity to attend to business without interruption until the duties for which we came here are performed. A great deal of time has been spent here and it has become a matter of reproach, and I hope, therefore, that we shall go forward to-morrow as usual, and hold a session on Monday.

Mr. AXTELL—I move the previous question.

The question was put on the motion of Mr. Axtell, and it was declared carried.

The question recurred upon the resolution offered by Mr. Van Campen.

Mr. S. TOWNSEND—I call for the ayes and noes.

A sufficient number not seconding the call, the ayes and noes were not ordered.

The question was put on the resolution offered by Mr. Van Campen, and, on a division, it was declared carried, by a vote of 44 to 33.

Mr. CURTIS—I offer the following resolution, and ask that it may lie upon the table:

Resolved, That the Committee on Revision be instructed to report the following as an additional section in the article on education:

SECTION —. Instruction in the common schools and union schools of this State shall be free of charge, under such regulations as the Legislature may prescribe.

Which was laid upon the table at the request of the mover.

Mr. C. L. ALLEN—I call for the consideration of the resolution which I offered yesterday.

The SECRETARY proceeded to read the resolution as follows:

Resolved, That the Committee on Judiciary be instructed to strike out the word "sixty" in line twenty-one, section 18, of the article on judiciary and insert instead thereof the word "forty."

Mr. FOLGER—I move to amend the resolution so that it shall read "be authorized." Although I have been opposed to making the limit smaller than sixty thousand, I find that very many gentlemen of the Convention claim that in their particular localities it is almost absolutely necessary that there should be some alteration from the way the article stands now. I feel inclined to yield to their wishes in that respect; and still, I would like to have some latitude left to the committee in reporting the phrase when they come to report this article. That is the only reason why I ask the word "authorized" to be inserted instead of "instructed." I shall yield so far as I am concerned, my position; but I would like to have some latitude left as to the number of thousand that shall be necessary.

Mr. C. L. ALLEN—I have taken some pains to inquire of gentlemen, members of this Convention from different counties of the State, and I think the number which I propose to insert, corresponding as it does with the number in the Constitution of 1846, will be the most acceptable to this body. My friend from Ontario [Mr. Folger] proposes that the committee be authorized instead of instructed. I know not why that should be so. It is not compulsory now; the resolution does not propose to make it compulsory, but it leaves it as it is in the Constitution of 1846. It leaves it to the Legislature, that they may establish surrogates' courts in counties where the population exceeds forty thousand. As I said yesterday, I am perfectly convinced that, in counties where the population amounts to that number, it will be impossible, with the proposed increase of jurisdiction of county courts, for county judges to perform the duties of surrogates. I speak with some knowledge in regard to my own county, where the duties of the county judge will be greatly enlarged. There can be no equality in making the population exactly the ratio on this subject. In some counties, perhaps, in the State, with a population of forty thousand, where there is not much commercial business, there might be some reason for limiting the amount to the number of sixty thousand; but in our county, for instance, where the population is between forty and fifty thousand, we have a large commerce with Canada, by way of Lake Champlain, which brings a large amount of business into the county, and will tend thus to increase the duties of the county judge under the proposed enlargement of the jurisdiction of county courts. And so it is in regard to some other counties. In some counties the population exceeds fifty thousand, and a large business will devolve upon the county judge, and yet they come within less than the number proposed by the gentleman. If it be left to the discretion of the Legislature, that body would never pass a law unless the people of the county requested them to pass such a law. Therefore it is not compulsory, but it is only discretionary with the Legislature. I hope that the amendment proposed by my friend from Ontario [Mr. Folger] will not be adopted. I speak with some information on this subject, having conversed with several members of the Convention representing about the same number of constituents as myself, who will bear witness with me of the propriety of this resolution. I hope the resolution will be adopted.

Mr. VAN CAMPEN—I can bear the same testimony as the honorable gentleman from Washington [Mr. C. L. Allen]. My county has for a series of years contained a population varying from forty to forty-five thousand, and we have found it necessary to have a surrogate under the provisions of the Constitution of 1846. It seems to me that the proposed amendment is wise and proper for the reason that, in the county in which I reside, although it does not have an unusual amount of business either for a judge or a surro-

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gate, yet we have found it necessary to have the office of surrogate.

Mr. HALE—I would like to ask the gentleman from Ontario [Mr. Folger], if he will allow me, whether the effect of his amendment, if adopted, will not be to leave the whole matter to the Committee on the Judiciary, to change it or not, as they should see fit?

Mr. FOLGER—I understand that it will.

Mr. HALE—It then amounts to nothing except to permit the Committee on the Judiciary to make the change if they choose. I hope, Mr. President, that the amendment will not be adopted, but the motion of the gentleman from Washington [Mr. C. L. Allen] will prevail, inasmuch as the powers of the county court, and the duties of the county court have been so much increased by the action of this Convention. It seems more necessary now than ever it has been in the history of the State, that there should be in many counties a separate officer to perform the duties of surrogate. The county court will probably now be occupied more than it ever has been in the duties pertaining to that court.

Mr. SILVESTER—I trust that the resolution of the gentleman from Washington [Mr. C. L. Allen] will be adopted, and that the amendment will not. As far as my own county is concerned, there is a great necessity that the office of surrogate and county judge should be separated. Our population exceeds forty thousand by a very small number, and yet I was informed last evening by a gentleman who has had the charge of the business of the surrogate's office for the last eight years, that during the last year one hundred wills have been proved in the county of Columbia, about the same number of letters of administration have been granted, and about the same number of letters of guardianship, and the same gentleman further assured me that the business of the office in that county demanded the entire attention of one man, and that the surrogate himself had not been able to do all the business of the county of Columbia without the aid of a clerk. The gentleman who has just vacated the office, and has been surrogate of the county of Columbia for the last eight years, although a lawyer, has not devoted any time to the practice of his profession, but has given his attention entirely to the duties of the office, to the neglect of all other business. If the section as it stands in the report of the Judiciary Committee shall be finally adopted, there are more than sixteen counties in this State that would be prohibited from having a separate surrogate; a surrogate who should perform the duties of the office, separate from that of county judge. In my own county, I know that the county judge, with the present jurisdiction of that court could not be able to discharge the duties of the office of county judge and also of surrogate, and as we propose largely to increase the duties of the county court it certainly will be impossible in our county, and I have no doubt it will be in many others, for the same officer to discharge the duties of both courts. I trust, therefore, that the resolution of the gentleman from Washington [Mr. C. L. Allen] will be adopted.

Mr. M. I. TOWNSEND—My own county will not be affected by any change that may be made in pursuance of the resolution of the gentleman from Washington [Mr. C. L. Allen], but I wish to call attention to the relation that the surrogate ordinarily bears in the rural portions of this State, to the interests of the community. It is the only court in the State of any importance, into which persons interested go without the aid of counsel; and in our surrogate's court, during my entire practice, the surrogate has been the adviser of widows, guardians, and others who were interested in the settlement of estates, and a very large proportion of the time of our surrogate has been taken up, not in the rendering of actual adjudications, but in the giving of advice which he has from time to time been called upon to give, and has given, to persons holding responsible positions, in regard to the settlement of estates, thus saving them from the burden and expense of employing counsel. I think that instead of restricting the power of the Legislature to create surrogates' courts, it would be beneficent for us to provide in this Convention, although I do not make a proposition to that effect; I only say this as illustrating my view in regard to the office of surrogates' court—it would be very much better to provide that there should be a surrogate in every county of the State. Indeed, I hardly know, if my own locality was cut down to a population of less than thirty thousand, I hardly know how we could get along without an officer occupying the place that the surrogate has occupied during my practice in the profession.

The question was put on the amendment offered by Mr. Folger, and it was declared lost.

The question recurred on the resolution offered by Mr. C. L. Allen, and it was declared carried.

Mr. WALES offered the following resolution:

Resolved, That the Committee on Revision be instructed to add the following to the article on education and the funds relating thereto, viz.:

"SEC. 2. The Legislature shall provide by law for investing in the bonds of the government of the United States, under the direction of the State Treasurer, the principal of the United States deposit fund, as it shall be paid in to the loan commissioners of the several counties."

Mr. E. BROOKS—I move to amend by inserting after the words "United States" the words, "and the bonds of the several cities of the State."

Mr. FOLGER—I wish to debate the resolution.

The PRESIDENT—The resolution giving rise to debate, it will lie upon the table.

The Convention then resolved itself into Committee of the Whole on the report of the Committee on Cities, Mr. RUMSEY, of Steuben, in the chair.

The CHAIRMAN stated the pending question to be on the motion of the gentleman from Steuben [Mr. Spencer], to strike out the first section of the article.

Mr. VERPLANCK—I was endeavoring to show last evening that what are known as State commissions had their origin in parties; and I was told that this was not so in regard to the metropolitan police bill, because that bill was asked for by persons of all parties; but I refer to the statement of the gentleman from Steuben

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[Mr. Spencer], in confirmation of what I claimed. He stated last evening, in his place that, being a member of the Assembly when this bill was passed, and that it was passed as a party measure. The gentleman has corrected me by claiming that he said it was passed as a republican measure, and I do the gentleman the justice to make this correction. Now, so far as the capital police bill is concerned it has been claimed I know by the press that it had its origin as a party measure. I know that the city of Schenectady has protested through their counsel against the additional expense imposed upon that city on account of the police bill. So far as the Niagara police bill is concerned, in addition to what I said last night, I have been reminded by one of my colleagues of a debate in the house of Assembly when that bill was under consideration there. The member from the city of Buffalo objected to the passage of that bill "because," he said, "my constituents have not asked for it; they do not want it; they know nothing about it; and they do not need it." "I do not know what your constituents in the city of Buffalo need," was the reply. "I know what my party needs, and that we will have." I ought to apologize to this Convention for saying a word about the partisan origin of these commissions. And my excuse for having done so is in the remarkable appeal made by the gentleman from Rensselaer [Mr. M. I. Townsend] to the republicans in this Convention on this subject. What was that appeal? He says—"You send your members to Congress, to Washington, to cripple the power of the President. Will you confer these powers upon the mayor of the city of New York? You sustain your members of Congress in depriving the rebel States of their power of self-government, and will you hesitate to withhold it from the city of New York?"

Mr. M. I. TOWNSEND—Does the gentleman pretend to say that I uttered language of that kind?

Mr. VERPLANCK—I understood the gentleman —

Mr. M. I. TOWNSEND—I will say to the gentleman that it is not first cousin to it; it has no relation to it whatever. I said that we sent our members to Congress to cripple the Executive in the exercise of the power that he possessed; and now we are acting very inconsistently with that position, in proposing to give greater power to mayors of cities in their localities than the President of the United States possesses. The democratic slang was running in the gentleman's head, and he has got that and repeated it instead of what I said.

Mr. VERPLANCK—I beg the gentleman's pardon. I did not mean to misquote the gentleman. I made a memorandum of what the gentleman said at the time. I made it as I understood him.

Mr. M. I. TOWNSEND—I wish to say to the Convention, in order to set myself right, my friend from Erie [Mr. Verplanck] has once quoted from me what he had written down, and it had no relation to what I said in any possible shape.

Mr. VERPLANCK—I cannot have any personal controversy with the gentleman on this subject. The members of the Convention will correct me if I am wrong. The gentleman said more; he said that he "upheld every thing that the Congress did." I will not trust myself to comment here—

Mr. M. I. TOWNSEND—I did not say it then, but I do now.

Mr. VERPLANCK—You said it then.

Mr. M. I. TOWNSEND—No, I did not, but I say it now.

Mr. VERPLANCK—He said it in his place as I have stated, and so the gentlemen around me say. I will not trust myself to comment on this subject here, because I think it is an improper place to do so; but I cannot refrain from referring to one single subject.

Mr. COMSTOCK—I beg leave to call my friend from Erie to order. I do not think it is wise to follow the wild and rambling speech of the gentleman from Rensselaer [Mr. M. I. Townsend], if this discussion is in order at all.

The CHAIRMAN—The gentleman is in order, and will proceed.

Mr. VERPLANCK—I should like very much to defer to the advice of my friend from Onondaga [Mr. Comstock], but I must be permitted to take my own course and follow my own convictions with reference to my duties here. The Congress is not only crippling the power of the President, but they are attempting to cripple the power of the supreme court of the United States.

Mr. HAND—I would inquire if Congress is on trial here?

The CHAIRMAN—Does the gentleman from Erie give way?

Mr. VERPLANCK—No, sir.

Mr. HAND—I raise the point of order that Congress is not under discussion here, and not on trial here.

The CHAIRMAN—The gentleman from Erie [Mr. Verplanck] has a right to refer to any source of argument that he sees fit, that is not entirely irrelevant. He is in order.

Mr. VERPLANCK—These questions of order did not arise when the gentleman from Rensselaer [Mr. M. I. Townsend] was pursuing this subject. These subjects are only out of order when gentlemen on this side of the house refer to them. I was saying that the Congress of the United States not only were crippling the power of the President, but were proposing to cripple the power of the supreme court of the United States. What is the relation of the supreme court of the United States to the Constitution and the laws of Congress? The Constitution is the will of the people. It is their law. Congress acts through a delegated power. They are the servants and agents of the people; and when Congress, the servants, undertake to create a law in contravention of the Constitution, the law of the people, it is the duty of the supreme court of the United States to decide whether this act of Congress is passed in pursuance of the Constitution. And to-day it is proposed that if the supreme court annul an act of Congress as unconstitutional, it shall do it by a two-thirds vote of that body. If, Mr. Chairman, the necessity shall arise, who doubts but that this Congress would require a unanimous vote to annul an act of Congress? To-

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day it is two-thirds, next year three-fourths, and the year after it may require a unanimous vote. I refer to this not for the purpose of discussing it, but for the purpose of seeing whether it is not time for staid, steady citizens, who love their country, to pause and see what it is that the legislative power of this country is attempting to do and what usurpations they are entering upon.

Mr. SMITH—Will the gentleman permit me a single remark?

Mr. VERPLANCK—Certainly.

Mr. SMITH—I would like to inquire of the gentleman, in what clause of the Constitution he finds any thing that inhibits the Congress of the United States from prescribing the rules and regulations governing the supreme court in their decisions in relation to this matter to which he alludes?

Mr. VERPLANCK—I do not propose to go into this discussion. I only refer to it; and in connection with it I want to call the attention of members to another thing which has just been brought to my notice. I wish to call the attention of the Convention to the tendency and effect throughout the country of this attempt to cripple the powers of the President of the United States. I read an extract from the Meriden (Connecticut) *Recorder*, and the committee will observe the effect of this legislation upon the minds of men who undertake in the "land of steady habits" to direct through the public press the minds of the people. It says:

"There was found a fiend so utterly wretched as to take away the great heart of the nation, Abraham Lincoln; is there no patriot worthy to strike to the dust the hateful tyrant who is loading our beloved country with the galling chains of a most oppressed despotism? The names of Abraham Lincoln and John Brown are written side by side on the golden scroll of immortality: and he who would send an impeached traitor, betrayer and blasphemer to the bar of God for judgment would write his name in imperishable letters beside that of a Washington."

Mr. HAND—I rise to a point of order. I would inquire how far this discussion is to be allowed and where it will terminate, if gentlemen are allowed to read long extracts from partisan papers?

The CHAIRMAN—The Chair cannot inform the gentleman how far this matter may proceed. When, in the opinion of the Chair, the gentleman shall be out of order, he will so rule; but he is not, in the opinion of the Chair, yet out of order.

Mr. VERPLANCK—It seems to be supposed by some gentlemen of this committee—

Mr. FOLGER—I would ask from what paper that is an extract?

Mr. VERPLANCK—It is from the Meriden (Connecticut) *Recorder*. I read it from the Buffalo *Courier*.

Mr. FOLGER—I did not know but that it was from a New York democratic paper.

Mr. VERPLANCK—No, sir. I was saying that some members of this Convention seemed to suppose that if we changed the manner of appointing commissions, the powers and duties under these commissions would be destroyed. These bills were enacted for party purposes. They were enacted without the consent, and against the will of the localities which they affect. They are an effective party organization in those localities. The committee will bear me witness that I have said not a word against that commission; and I can here bear testimony to the respectability and high standing of the gentlemen composing the Buffalo police commission. The police system is not more efficient than it would be under the control of the cities at the same amount of expense. It is contrary to the spirit of our institutions, and should be changed. Our duty on this subject is plain. It is to place in this Constitution what was designed to be placed in the Constitution of 1846, and what has been defeated by ingenious legislation, and thus save the rights of these cities inviolate, and preserve the Constitution which we shall submit for the approval of the people from inevitable defeat. Gentlemen must recollect another thing in this connection: that the people of the city of New York, and the people of the city of Buffalo, will not be satisfied to have nothing said in this Constitution upon this subject. They ask affirmative action, that their lost rights shall be returned to them by this Constitution. There are other questions about which there is a diversity of sentiment, and you may get the main articles of the Constitution approved by submitting those things separately to the people; but here is a matter you cannot submit separately. If the Constitution does not have a provision giving back the rights which the cities heretofore possessed, it will be rejected because it lacks this feature. I hope and trust partisan feeling will not enter into our deliberations. I have made my apology to this Convention for referring to this subject, and I now regret that I have said a word on the subject. It would have been better if I had not said a word on the subject, but left the comments of the gentleman who introduced it without a word of reply. I trust and hope that in the spirit of kindly and fraternal feeling, gentlemen assembled here design, and hope to make a Constitution which shall make our State and principal city what they have been in the past—the chief State and city in the Union; that we shall so act on this and all other subjects that when the people come to act on the subject of the approval or rejection of this Constitution, there will be no political party in the State—there will hardly be an individual in the State who will not give his approval to the work we submit.

Mr. SPENCER—The gentleman from Erie [Mr. Verplanck] has made so much use of the remarks which I made upon introducing the motion now under consideration, that a brief explanation is due from me. I remarked that the police commission of 1857 was a measure of the republican party. The gentleman from Erie [Mr. Verplanck] at once construed that to mean that it was a partisan measure. Now, I wish it to be understood that a partisan measure, and the measure of a political party, are two entirely different and distinct things. A partisan measure, as I understand it, is one which is made use of to promote the mere interests of a political or other party. The measure which a party may adopt

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and favor, is one which involves the policy of the government—one which it regards as the exercise of wise statesmanship. In that sense all the great measures of the government that have been promoted and adopted, have been favored by one political party and opposed by another, and in that sense they were party measures and not partisan measures. The charter of the government bank—of the United States Bank—was a party measure, and not a partisan measure, in the sense in which the gentleman from Erie [Mr. Verplanck] uses that term. The tariff of former days, the principle of protecting home manufactures, was a party measure, because it was favored and advocated by one party and opposed by another. The enlargement of the canals of this State, was, in that sense, a party measure—it was regarded as the exercise of the wisest statesmanship, and was advocated by one party and opposed by the other. And so it has been through the entire history of this union, and every other free government; that the statesmanship of the government has been exercised in the adoption of party platforms and the carrying out of party principles.

Mr. M. I. TOWNSEND—My friend from Erie [Mr. Verplanck], is entitled from me to the brightest and most distinguished token of my admiration that it would be possible for me to paint or write. His memory certainly is a possession that every man ought to admire if he does not envy; because, certainly, a memory that can lay up and quote a course of remarks such as mine, in the form which the gentleman's memory has preserved them, certainly is a thing of wonder. But the gentleman from Erie [Mr. Verplanck], holds me up as having uttered sentiments that should fill the minds of this Convention with horror, because of certain proposed action—not real action—certain proposed action of Congress in regard to the supreme court. I deem it not inappropriate to recall to the memory of the gentleman from Erie [Mr. Verplanck] if it is not as far out on the subject of the supreme court of the United States, as in other respects, the position which he and I occupied, in our outset in political life, in regard to this same supreme court of the United States that he now proposes to enshrine and worship. The first doctrine that I ever heard announced from the lips of that gentleman, and the doctrine which I then believed as I did holy writ, was that it was the duty of a statesman to hold his opinions of the Constitution of the United States independent of the decision of the supreme court of the United States. That was in the school of "Old Hickory," and he and we interpreted the Constitution of the United States as we understood it, but it was never, until the day when the supreme court of the United States discovered that a portion of the creatures that God had made and had enstamped his own image upon, had "no rights that white men were bound to respect," that my friend from Erie [Mr. Verplanck], learned to love the Constitution of the United States so dearly as he loves it to-day. I trust and I prophesy that if the gentleman's political feelings will hold on as they are on now—

Mr. FOLGER—I rise to a point of order. This train of remark is foreign to the amendment now under consideration.

The CHAIRMAN—The gentleman is proceeding further than is relevant to the subject under consideration or a direct answer to the argument of the gentleman.

Mr. M. I. TOWNSEND—If the gentleman will allow me to finish that sentence I will go no further.

Mr. FOLGER—I insist on my point of order.

The CHAIRMAN—The gentleman will please come to order—the gentleman from Ontario [Mr. Folger] insists upon his point of order.

Mr. FOLGER—We will guess the other part of it.

Mr. KINNEY—I would like to hear what the sentence is that the gentleman was going to utter. [Laughter.]

Mr. POND—I would like to inquire, if we do not know what the sentence is, how we can ascertain whether or not it is out of order. [Laughter.]

Mr. M. I. TOWNSEND—I will suggest it, and if the Chair rules it out of order I will not utter it. [Laughter.] It is that the gentleman from Erie [Mr. Verplanck] parts company with the supreme court of the United States the moment that court begins to believe, or the majority of it begins to believe, that four millions of black people in this country have any rights which white men are bound to respect. If that is out of order I will withdraw it. [Laughter.] As I rose principally to reply to matters that were as much out of order as this, under the ruling of the Chair, I will forbear my remarks at the present time, except, perhaps, that it may be in order, as one gentleman [Mr. Comstock] has chosen on this floor to criticise, in a loud tone of voice, designed for the hearing of the Convention, the remarks which I felt it my duty to make here, as "wild and rambling." I will take the liberty to say, if permitted by the Convention, that I am exceedingly sorry that my remarks in their tone and manner, did not meet the approval of that gentleman, because—

Mr. COMSTOCK—If the gentleman will allow me. I think my expression was hasty and ill-advised, and I take great pleasure in withdrawing it.

Mr. M. I. TOWNSEND—If my friend puts it in that form, I am certainly satisfied.

Mr. COMSTOCK—I have the greatest respect for the abilities and motives of the honorable gentleman.

Mr. MURPHY—I do not know that I can expect, after the exhibition of youthful fervor that has been manifested on this subject by the venerable gentlemen who have preceded me, to interest the Convention in the few remarks which I am about to make upon it, still I ask the attention of the committee for a few moments, while I present some considerations of a general character. Although I do not entirely agree with the majority of the committee, and differ from them in some particulars or provisions of the section which is now proposed to be stricken out, I cannot consent to give my vote to strike out the section. The purpose of the motion is avowed to be to test the question whether there shall be any

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constitutional provision upon the subject of municipalities. I think there is no one, who is not perfectly aware that one of the principal objects for the calling of this Convention was to regulate by fundamental law the government of our great cities. From all quarters of the State the cry came up for something to be done to arrest the corruption in common councils, the extravagance, waste, and inefficiency in municipal government—the consequences of an ill-regulated system. We saw in our cities combinations of men for public office; the public service obstructed and hindered; the streets rendered almost impassable by nuisances of different kinds; the wharves dilapidated and unfit for use; and thus the greatest commercial interests suffering from the effects of a vicious organization and bad legislation. For years, I may say almost for a generation, the communities in our great cities have been struggling against the evils of bad government and seeking to have proper laws enacted at Albany for remedying these evils. Measure after measure has been passed for this purpose, and yet it seemed that the evils were increasing, and the hearts of good men despaired of reform being accomplished. I do not exaggerate, sir, when I draw this picture. I feel convinced that there is no one within the sound of my voice who will not bear witness to its truth, and yet it is here gravely proposed, when we are just entering upon the threshold of the discussion, to strike out this section of the article altogether, and summarily refuse relief. Now, I hold in the first place, that the evils which exist in the great cities, and perhaps in others in the State, arise from vicious legislation, and it is peculiarly the province of this Convention to adopt some constitutional provision which will prevent it. I believe further that the difficulty in our municipal legislation arises, in a great measure, from partisan action. I will not follow the example of the gentleman who preceded me, in denouncing any particular party, because it is not the fault of either exclusively; nor do I seek to shield those with whom I have acted politically. These evils are the result of improvident legislation through the political action of both parties; and the good and wise men of both must adopt, now and here, a remedy. The statutes which have been passed from time to time by the Legislature for the creation of commissions, were initiated by the enactment of the metropolitan police act, and I should be doing violence to history and to truth if I did not admit that there were great and grievous complaints against the management of the police force in the city of New York at that time. Those complaints, if they were not the sole cause, were the pretext for the passage of that act. The truth is, that the official patronage of our great cities both before and with the passage of the police law and since, has been so regulated by the law as to make office the great object of legislation, instead of the good and welfare of the people, and by the concentration of power, to place in the hands of a few men, the entire control of the patronage of those cities to be used by them for political and selfish purposes, to the utter destruction of the true ends for which municipal governments are instituted. Whon is to be seen in one department of the government of a city one man wielding the patronage of four or five hundred appointments, varying in the salaries attached to them, from one to three thousand dollars or more a year, ramifying all parts of the city, and constituting an army of men constantly working to keep their chief in power, is it not evident that the voice of the people must be overruled and the public interests be placed at the mercy of designing men. Such a state of things has long existed. It is evident there has not been a wise system pursued in regard to the appointment of these chief officers, nor, again, in regard to the appointment of their subordinates. Corruptions and abuses have thus crept in the system of popular elections in cities and have led a great many good people to seek relief in the other extreme, by measures which have been fraught with equally pernicious consequences. Such as I have already said was the origin in part of the police system which exists in the cities of New York and Brooklyn. That was found a convenient political machine, and having worked well for the purposes of a police, partisans rushed up to Albany and obtained commission after commission under the same or similar pretexts; transferring other portions of the municipal power from the people of the cities of New York and Brooklyn to the Legislature; boards for which there was no necessity, and which were created for the purpose of securing to a minority the emoluments of office and the political power which attaches to office. Now, I hope I offend no one by speaking so plainly in regard to this matter. I have myself seen the means by which these measures, year after year, for the last few years have been enacted; and I have seen that they have had their origin, not in a regard for the public good, but in considerations of private advantage. What has been the consequence? Those cities now lie bleeding from bad management on the part of the local authorities on the one hand, and this most unwise and injudicious State interference on the other. Why is this interference injudicious and unwise? The Legislature create a commission to perform some function of local government and require a certain amount of money to be raised by law for the purpose of carrying out its objects; the commission proceed to expend that money as they please, the people unable in any way to restrict the expenditures. The people must pay as dictated here at Albany, and dictated I must repeat, not always with the purest motives, or for the best ends. Thus these boards are the most extravagant way of managing the public affairs and the most despotic. Placed as it were above all control of the community in which they live, they exercise their powers only in obedience to the wishes of their masters at Albany, feeling satisfied that as long as they do that, they will be safe in their places. This system, bad as it is, when there are two different parties in power, one in the city and the other in the State, becomes much worse when both are of the same political character. Should our cities be left thus at the mercy of shifting legislation for mere party purposes, or should they be regulated by wise constitutional pro-

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visions? I did not have the pleasure of hearing what was said upon this subject by the able chairman of the committee, but I have heard much said since I have been in the room in reference to local government. What is local government as sought for by the friends of municipal reform? It is not, as the delegate from Fulton [Mr. Smith] argued, a right of government independently of the State. All that the cities of New York and Brooklyn have claimed in that respect is that they should have the same right of local government as other portions of the State. They insist that if it be proper to retain in the Legislature the power of appointing health officers, police officers, or any other officers in those cities, in consequence of their duties being of a general and not a local character, the same provision be made applicable equally to each and every part of the State, and to all communities alike. They believe, however, that these duties will be best performed by officers appointed by the communities where the duties are to be performed. It is objected that this mode of election or appointment is an abdication of the sovereign power of the State over the subject. Why, sir, your whole Constitution wherever it confers the right of election upon the local constituencies is an abdication of State sovereignty in this sense. The provisions in the present Constitution, proposed to be repeated in the one we are now forming, that towns and counties shall have the right to elect their own officers, abdicate on the part of the State in the same way as is now proposed in regard to cities any power or control in the selection of officers. But there is no abdication of sovereignty in either case. You only commit the administration of the local laws to the people in the different localities who have the principal interest in their proper administration. We claim that the people of the cities are as capable in this respect, in regard to their localities, as the people of the different towns and counties in the State are in regard to their interests and in this sense have the same right. There is as much interest felt, and prudence observed among the inhabitants of the cities, in regard to their local affairs, as by the people in the rural parts of the State, and both should receive the same consideration. Any discrimination against cities in this respect is a flagrant wrong to republican government. There is not that difference which is claimed by some between men in the rural districts and men in cities. I am tired of the stuff which I hear here about citizens of foreign birth in our cities, that they are not to be trusted with a vote or with taking any part in local government, although identified by citizenship, family, relationship and business with the place. I have no appeals to make in their favor particularly, but I aver here, from a long knowledge, political and otherwise, of the subject, that the mass of the voters in the cities, when left free from this corrupting official patronage which influences alike the country and the city, vote as intelligently and with as much regard for the interests of the community as do any other class of our people. Popular government will be vindicated only by giving the people of the localities the ultimate control in the selection of the persons who are to serve them in official capacities. I do not advocate a multiplicity of elective officers in the cities. I think a portion of those officers may be elected, and a portion of them may be appointed by the local authorities, but by a distribution of this power in a way to break up the combinations and corrupt influences which exist under the present system. Mr. Chairman, I have long had my convictions upon this subject. What I speak to-day in regard to the general question of city government, has been confirmed by long observation. For full twenty years I have been endeavoring, in my humble way, to bring about municipal reforms. In order to have wise and judicious reforms, the laws in regard to cities should be modeled upon a general plan. I am no believer in charters, or special laws for this purpose, or in the old colonial patents to which some of my friends in New York cling so closely. I do not think that we are to look to the charters of our cities for models of good government. I would obliterate all that has been granted by the crown of England that is now in force here. Of course cities may have chartered rights of property; they have had lands given them and ferry franchises, and other rights of property, which, as a matter of course, belong to them and are not to be disturbed; but so far as regards the matter of government, the manner in which the city shall be governed, that belongs to the sovereign people of the State to determine. It is by legislating in continuation of this system of special charters, that we have fallen into our present difficulties. Our legislation is different for each city. Those interested in incorporating a city come up to Albany and beleaguer the Legislature for a charter, or for amendments to a charter, with provisions designed to carry out their own particular purposes. The great body of the representatives of the State feeling no interest or concern in the bill, in consequence of its local operation, say in substance to those who seek it, "take what you want," and they do take it by default, nobody opposing it. The consequence is that we have a great body of incongruous legislation in regard to cities, each one having its own peculiar forms and provisions. We will not get rid of these evils until we organize our cities upon some general plan, for which purpose, however, I would classify them, that is, I would say that all cities with a population of over 250,000 should have certain officers and powers, and those with a population over 50,000 and less than 250,000 other powers and officers. With such general laws for the government of cities there would not be that constant special legislation which is destroying entirely the efficiency of the city governments, and by which the charters are made the tools or instruments of corrupt and mercenary men to carry out their purposes. Well, how are we to secure these general laws? The Legislature will not pass them, unless you put a mandate to that effect in this Constitution. We have adopted this principle in regard to other corporations, and therefore there is no want of a good precedent on the subject.

Mr. GRAVES—Having had the honor through

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the courtesy of the President of this Convention to be placed upon this committee whose majority report we are now discussing, I feel at liberty to suggest some views which I now entertain, based upon the facts that have been elicited during the time that we have been engaged in the labors of that committee. Coming, sir, as you are aware, from a rural district with no particular knowledge of the administration of the government of the city of New York, and with no other knowledge of the laws on that subject than such general knowledge as a lawyer usually obtains by reading the session laws in his office after their passage, and feeling no other interest in the subject than a desire that the city of New York, in common with all other parts of the State, should be governed by laws which should subserve its general interests, my attention was not necessarily called to the subject before, so that when I came as a member of this committee to the discharge of the duties which I was called upon to perform, I came only impressed with the general doctrine which I had imbibed in early life, and which has always seemed to me a cardinal principle of the government of our country, that the people thereof, and of every part thereof, were capable of self-government. With that general belief I entered upon the discharge of my duties as a member of that committee, with the desire to be set right if I was wrong, and to ascertain if there was any good reason why the city of New York should be taken from under the operations of the general laws applicable to the other localities in the State. And, sir, ignorant as I was of the operation of the metropolitan police law I found it necessary of course to make many inquiries of that intelligent and industrious committee, and I take occasion here now to thank the other members of that committee for the great patience which they exhibited in responding to the many, perhaps seemingly ignorant, inquiries that I made of them upon this subject. Now, sir, with all the zeal that I could manifest to attain the truth, I have not been able to find, either from the facts disclosed before that committee or from any argument that has been made upon this floor, that the doctrine that the people are able to control and manage their own affairs, in short that they are capable of self-government, is not the true democratic doctrine upon that subject. I do not intend to appeal to or present my views particularly to my republican friends here. When I came into this Convention I ignored all political feelings and partisan attachments, and I came here to associate with the members of this Convention as a body of men desiring to make an organic law that should subserve the general interests of the State, and that, too, without respect to the ascendency or defeat of either political party. Sir, in my judgment, party has little to do with the discussion in which we are engaged. Party is not the subject to be considered here. Party is subject to vacillation. The democratic party may be in the ascendency to-morrow; and I can see no earthly object to be gained here by alluding to the events that have occurred since the beginning of our late war. I can see no advantage resulting from calling up the calamities connected with that subject; or referring to the mob that made riot in the city of New York, or one that did the same in the city of Troy. If that has any bearing upon the question before this Convention, it must be an evidence of the inability of the people of the State of New York to control themselves. Now, if these reminiscences are introduced for that purpose let me ask whether the mob in July, 1863, or the mob in Troy are the only evidences of the uprising of the people of this State to carry out their particular views? It is well known to every member of this Convention that mobs have occurred in the several States of the union ever since the organization of our government, and in many instances they have not had any thing to do with politics? In some instances mobs have originated from selfishness and for objects of gain, and not from any party or partisan spirit or desire. Now, sir, no man has been found upon this floor who has for one moment justified the mob in the city of New York, or the mob in the city of Troy, and I can see no earthly object in alluding to those mobs as my able and ingenious friend from Rensselaer [Mr. M. I. Townsend] has done, except to appeal to the passions of members of this Convention, rather than to their sound and sober judgment. I listened to the argument which was made by the able chairman of this committee, and I submit to this Convention, and to the candor of my friend from Rensselaer himself, whether he feels as if he had answered the argument made by the chairman of that committee? That argument is founded upon the principle that the people of this State are capable of self-government, and that they have the right to self-government. It was an able argument, addressed to the intelligence, good sense and fairness of this Convention, and I submit that it has not been fairly, intelligently and judiciously answered. It appears to me, sir, that the only question before this Convention is the broad question: Are the people of the State of New York capable of self-government? That puts the whole thing in a nut shell. Let us inquire first, what would be our position if this doctrine, this principle of interference with the rights of the city of New York is to be continued to be exercised by the Legislature of the State. It is conceded that the democratic party is in power in the city of New York, and that it has a decided majority there. Now, our government is formed upon the principle that the majority should rule, and that the minority should be subservient to them; and it is upon the broad, general ground that the majority are presumed to be right. We hold this doctrine in this country that the majority is right, and that the minority is wrong. Now, if that be the democratic doctrine of our government, and a true doctrine, then permit me to ask how, if the democratic party are in a majority in the city of New York, and the Governor and Senate of the State of New York are of the other party, if it is not within the power of the Governor and Senate to create commissions to control and manage the local affairs of the city of New York, without the assent of the people of that city? Is that in accordance with the general principle of our government of which I have just spoken? Is that the ground upon which our

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institutions rest—that the minority is to control the majority—for that is the effect of it? If the appointing power here is controlled by the party that is now a minority in the city of New York, and they appoint here those officers who are to govern and manage the affairs of the city of New York, I submit that if the people of that city do not acquiesce in such government, whether the whole thing is not antagonistical to the doctrine of self-government, and to the doctrine that the majority shall rule. But, sir, suppose that the republican party of the city of New York should occupy the place which the democratic party occupies to-day, and the Governor and the Senate should be of the party in the minority in New York, I submit to my republican friends here if they would be quite willing, the Governor being a democrat, and the Senate being democratic, and the republicans of the city of New York in the ascendency, that the rights and interests of New York should be controlled by the minority? Sir, I have lived over a period of half a century, and for more than thirty years of that time I have been identified with a political party, but I have never yet found a party that I thought was perfectly pure. I have never yet found a party in this country that I thought could divest itself of the desire of ascendency and power, rather than for right and justice; and while I have adhered to what I believed to be right, and while I have attached myself to the political organization that I thought was steering nearest to justice, I say I have never yet found a party, but what I thought, if I could have had my own way about it, I could have improved it and added to its principles of justice and right. Now, it is said that the city of New York, of all other cities in the world, is the most corrupt and abandoned, and that it is not competent to take care of itself, but that it really requires a special interposition of the State government. Who compose the population of the city of New York? It is said that the population is made up of every thing and every body, that the roughs and vagabonds, the thieves, the paupers, the felons of the world are congregated in New York city. Are they voters? Our laws require that when a man comes here and asks the privilege of exercising the elective franchise, he shall comply with certain conditions before it can be given him. First, he must have lived in the United States for at least five years, and in the State of New York for one year before he can become a citizen. He must do more than that. He must file in the office of the clerk of his county his intention to be admitted a citizen of the United States, and then at the end of five years he must call two of his neighbors, men who are acquainted with him, who know his moral character, who know what his conduct has been since he has been in this country. He must summon those neighbors before the proper tribunal, and there they must swear that they have known him for so long a time, that he has sustained a good moral character, that he is attached to the principles of the government under which he lives, and that he is well disposed to the good order of the same. They must swear to this, and he must swear that he desires to become a citizen and that he abjures allegiance to all other countries. All these conditions being complied with, you admit him as a citizen and allow him to go to the ballot-box. Now, sir, are our laws defective in this respect? And when these two witnesses go and swear to all that I have stated, do they perjure themselves? After all, does not the man desire to maintain and support our institutions? Why, sir, if it is true that our laws are worth preserving, if it is true that they are the result of sound sense and judgment, if it is true that these men whom we admit as citizens are worthy to become such under our laws, is it not also true that they are entitled to the right of suffrage? And such men, men who are citizens of this country and entitled to vote, are the men who approach the ballot-box; and foreigners, men who are not citizens—strangers, of no country, no clime, no religion, and who have not conformed to the prerequisites required by our statutes—cannot go to the ballot-box and vote. Now, after we have invited these men to our country, and said by our laws and by deliberate enactments that they are fit to become citizens, is it right, is it just, is it wise, to deny them the right of going to the ballot-box and of taking part in the election of the officers who are to administer the government of the localities in which they live? Now, sir, it is said that there is a great deal of immorality in the city of New York. I admit it, and I would ask the gentlemen who are opposed to this report to show me in the State of New York a place where vice and immorality do not exist and where vicious men do not congregate; and I would ask if there is any gentleman here who will undertake to say that the city of New York, in proportion to its population, has any more criminals than any other city in this State? So far as my examination has been made, I have failed to find that there are any greater number of criminals in the city of New York, in proportion to its population, than in any other part of the State. And, sir, what evidence have we that the people in the city of New York are not capable of electing their own officers to regulate the affairs of that city? The general statutes of the State of New York require of citizens of that city just as faithful allegiance to the common law rights and statutory provisions as they do in the rural districts. When money is to be raised to defray the expenses of our government, when common schools are to be supported, when all the objects of charity are to be exercised, I ask, does not the city of New York respond to these claims? Why, sir, the city of New York pays its taxes to help support every common school in the rural district, and very large amounts of the money which are taken from the thousands of toiling men in the city of New York, as well as from the capitalists of the city, goes to support and maintain and educate the children of the country. Now, sir, the city of New York erects its asylums. It creates its houses of refuge, it takes care of the deaf, the dumb, the blind and the insane, with all that warmth of feeling and charity and kindness that is manifested in any district in the State of New York. Sir, does not the city of New York contain as many churches and as many worshipers of our Creator as any other place in proportion to population? And have we not as many

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devoted Christians there as we have in the rural districts in proportion to its population? Yet we are told that all this kindly feeling manifested on the part of the city of New York to take care of its young and rising generation and educate them and direct their footsteps in the path of virtue and of right, is not to be credited to them, and that they are not entitled to the right to control their own affairs. Now, sir, in my opinion, the whole difficulty lies in something else. I must be permitted to add, with all due respect to the gentlemen of New York occupying high position in society and conspicuous places in this Convention, that I believe the whole difficulty of the bad government and mismanagement, if there is such a thing in the city of New York, grows out of the indifference of the capitalists in that city to take care of it. Sir, it is the grasping of the almighty dollar that controls the judgment of the city of New York rather than moral influences that are brought to bear. Why, sir, is it not true that men are there engaged in large and extensive business who pay no attention to the organization of government? Is it not true, and do not we all know it in the rural districts, that the capitalists and business men of high integrity and great moral worth pay little or no attention whatever to the selection of the officers of that city? Sir, they allow those of perhaps less moral worth, of less high standing and of less integrity to control that city, and they exhibit an indifference which, in the country, would be regarded as very reprehensible. Now, sir, permit me to ask who it is that selects the judges in the city of New York? Is it the Governor and the Senate who are instrumental in selecting those officers by whom and through whom the law is to be administered? Sir, if the city of New York is incapable of electing these policemen who are simply to execute the laws after they are made and after sentence has been passed by a jucicial officer, permit me to ask if the citizens of New York are competent to elect the judicial officers who are to determine and construe the law? There is no complaint on that score. I have never heard of any application being made to the Legislature that the judicial officers of the city of New York should be appointed by the Governor and Senate or that there should be a council of appointment for that purpose. Sir, they do elect their judicial officers—they elect their supreme court judges within that district, they elect the superior court judges, and they elect the common pleas judges—and they elect responsible gentlemen of capacity and ability to these positions. And yet we are told that, when they are allowed to elect these responsible officers—these men who are to give tone and character to the laws that are to govern the city of New York—these men who are to see that the laws are duly executed and properly construed—that when it comes merely to the question of appointment of a police to execute those laws, the citizens of the city of New York are not competent to do it.

Mr. AXTELL—I would like to ask the gentleman from Herkimer [Mr. Graves] if he does not know of one instance, at least, in the city of New York, when a judge was elected to the bench of the superior court who is unfit for the position, who is a criminal and unfit for decent society?

Mr. A. R. LAWRENCE—No, that is not so.

Mr. GRAVES—I cannot answer that question unless the gentleman from Clinton [Mr. Axtell] will refer me to the man.

Mr. AXTELL—I refer to Judge McCunn.

Mr. GRAVES—It may all be true; and is that all the evidence that the opponents of this measure can bring? Is that the only case that they can produce in the city of New York for twenty years? If so—

Mr. E. BROOKS—I would like to suggest to the gentleman [Mr. Axtell] that there was a judge in the county of Oneida who last year was tried before the Senate of the State, and was dismissed from office because of his conduct.

Mr. AXTELL—The difference is that the judge in Oneida county was removed from office when his wrong acts were discovered; but Judge McCunn was elected to his office after his criminal conduct was known.

Mr. ALVORD—I rise to a point of order. It is that this by-play between persons not upon the floor legitimately, cannot be permitted in Committee of the Whole.

The CHAIRMAN—The point of order is well taken, and the gentleman from Herkimer [Mr. Graves] will proceed.

Mr. GRAVES—I am very happy to say, sir, that I believe the conviction of the judge in Oneida county was founded upon just principles, and calculated to subserve the ends of justice. I think, if the Legislature of this State had taken into consideration the conduct of Judge McCunn, the same happy result, perhaps, would have taken place—a result creditable to the city of New York and creditable to the county. Now, sir, without detaining this committee at any length upon this question, I desire to make two or three inquiries. Why is it that the city of New York is selected from among all the other cities of the State as incompetent to govern itself, when it must be conceded that the population of that city is no worse in proportion to its numbers than any other? And, sir, permit me to ask, if it is necessary to have an imported police—if I may be permitted to use the expression, in the city of Albany, for they have it here—are not the people of the city of Albany capable of selecting their own policemen? Are they not qualified to do it? Are they so lost to the sense of duty, and so unmindful of what contributes to their own interests as to allow immorality and impropriety to prevail in the city of Albany, and then appeal to the Legislature of the State of New York for protection? And, sir, let me go to the city of Buffalo, where my friend [Mr. Verplanck] resides. Although I have a limited acquaintance with the city of Buffalo, yet I do not believe that the character of the people of that city is so lost to its own interest as to be unable and unqualified to select from among its body suitable men to control and take care of it. Now, sir, if it is true that the people of the city of Albany, and the people of the city of Buffalo, and the people of the city of New York, and the people of the city of Brooklyn, and the people of the city of Troy are incapable of controlling their own interests, and incapable of selecting officers com

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petent to discharge these duties, then, sir, it appears most clearly and unmistakably true that the principle upon which our government is founded was a mistaken one, and that the principle of self-government cannot be sustained among an intelligent people; and if this usurped power is to be continued over the city governments, then, sir, it is an abrogation; it is an annihilation of the fundamental doctrine upon which our government is founded, that our people are capable of self-government.

Mr. HAND—I do not desire to controvert the general principles laid down by the gentleman [Mr. Graves], that the people are capable of self-government as a general axiom, and that so far as we can do it with safety in the government of the State of New York that principle should be carried into active operation. A gentleman upon our Committee on Cities asked me while we were discussing the subject if I had lost my confidence in the capacity of the people for self-government. Said I, "What portion of the population of the city of New York were born on foreign soil?" He said, "Not quite two-thirds, but more than three-fifths." "With regard to such a population," said I, "I have not lost my confidence, for I never had any to lose. If our whole population, or a large majority of them in the State of New York, were made up of persons of that character, I would not dare trust the interests of government to their control. I say give me an absolute monarchy rather than such a rule as we would have, and not trust to republicanism administered by the ignorant and vicious constituting your majority." I speak for myself in this matter and not for any party. The safety of republican institutions and the safety of self-government depends entirely on the intelligence and virtue of the people. I need not argue to this body that virtue and intelligence are the foundations on which our government must stand while it shall stand. Without these in the responsible majority, ours is the worst form of government on the face of the earth. And I mean an intelligence founded upon a careful study and years of experience in the doctrines of republicanism. That safety does not reside in the masses of the people who come here from foreign soils, who have never been instructed in their childhood, who have grown up under influences calculated to demoralize and keep them in ignorance of the true doctrines of republicanism. That is my opinion, and I express it very freely. Some of the statements of the gentleman from Herkimer [Mr. Graves] are so extraordinary that I cannot but review them. He says that in the city of New York no man has a right to go to the polls and exercise the right of suffrage until his character is indorsed and made substantially good, until he has a certificate of good morality, intelligence, and good behavior, and that this constitutes a perfect security against the evils I deprecate. Now, I appeal to the good sense of the gentleman from Herkimer in saying that I don't think he believes a word of it. [Laughter.] There are not five men in this Convention that believe that this is any real evidence of good character. Does he not know that the various criminals, men who are intoxicated every day of their lives, go to the polls and vote without hindrance, and that the same is true in t place where he resides no less than in the city New York? What does all this certificate of go behavior and character practically amount to? is not worth a farthing, and the gentleman kno it; and I am astonished that the gentleman shou have made such a statement to a body like th It might do to make such a statement in an el tioneering speech—

Mr. GRAVES—I would ask the gentlem from Broome [Mr. Hand] whether the immo do not go to the polls in Binghamton?

Mr. HAND—They do. That is where I get m knowledge of the fact, that, notwithstanding man may have a certificate from good neighbo as good as himself, and of as good character an principles, and as ignorant as himself of the g nius of free institutions, and as incapable as hi self of assuming the duties of American citize ship, he is allowed to vote, though he be t veriest scamp in the community. One gentlem has said that the average morality of the city New York—I mean the gentleman from Richmo [Mr. E. Brooks]—is as good, and that the intel gence and conduct of the people of that city a as good as that of the people of any other porti of the State. When he made that statement, a he has several times made the same statemen before this body, the gentleman knew that the were not five men in this room who believed word of it. It is not true. The gentleman co tradicted himself by some statistics that he ga to us two or three days ago, perhaps, when made this statement, and I am glad he gave the to us. When we have a beautiful edifice broug to our notice like the social fabric in the city New York, and our attention directed to its dele able masses, and our admiration is challeng by a person who speaks of the glories of th social fabric compared with other communitie the man must make one part of his high-wrough description so match with the other as to produ harmony and consistency, or we shall detect t fallacy of his descriptions and have a slight dou of their truthfulness. The gentleman spoke the vast amounts expended in the city of Ne York for charitable institutions and institutio for the prevention of crime—institutions creat for the purpose of aiding in the great work healing the evils that crime, neglect and vice h produced. This proves what I have new doubted—the existence of a noble class in t city of New York. But whence the necessity all these charities, I ask you?—charities equal amount to all the rest of the State. The expend tures of the entire State in the rural distric would not amount to one-half what is expende for charity in the various ways to help to ke down disorder and suffering in the city of Ne York. What does this prove? That those di orders are equal to those of the whole State New York—yes, vastly greater in extent a magnitude to the aggregate of the entire Sta outside of the metropolitan district. What ne of these charities to cure these evils? When comes the destitution? Whence comes the n cessity for hospitals and asylums for the orph and the destitute but from the vices and wron doings of men? They come upon them becau

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of the vices of their natural protectors. And, notwithstanding the fact that, the raising of this money and its expenditure argue the benevolence of the people of the city of New York and their attention to the wants and the injuries inflicted upon portions of the community, it likewise proves the existence of those evils; it likewise proves the corruptions of that society and the outrages upon the rights of the helpless in those cities. I do not dispute the fact that a vast number of the people of the city of New York are virtuous and intelligent. I admit that a vast number in all the vocations and walks of life are, perhaps, superior to what you can find in any other part of the State; but I speak of two-thirds of the population of that city—men born in foreign lands. I say it takes a whole life-time, under the influence of free institutions—without education or culture, with foreign prejudices—to qualify a man to properly appreciate the doctrines of self-government, and to be safely intrusted with the responsibilities of citizenship in this country. There are a few men born on foreign soils who sufficiently appreciate this, but they are few. The only safety in this country exists in our institutions of learning and of religion, that can enable us safely to take into the great stomach of the body politic this impure mass and digest and assimilate it into the body politic, in short, to fit those people for citizenship; and that is an experiment that has tried the feelings and tested the sincerity of many a man in his belief of the doctrines of republicanism, whether with the vast masses coming to our shores from foreign lands, from year to year, it will be possible for us to assimilate this crude mass, and prepare it for the glories and dignities of American citizenship, so that the ship of state can ride along in safety.

Mr. S. TOWNSEND—I would like to ask the gentleman from Broome [Mr. Hand] whether there was any difficulty found in assimilating that crude mass on the battle-field? [Laughter.]

Mr. HAND—I will tell the gentleman upon what battle-field they were assimilated. They did fight to support the party to which the gentleman [Mr. S. Townsend] belongs, and in the battle they had every thing their own way in killing negroes, burning orphan asylums, and robbing respectable citizens. It is said that we should not allude to that mob in the city of New York. I allude to it in order that we may learn from experience. It is said that "experience is the only school in which fools will learn," and I hope that we are not fools enough not to learn in that school, and if such riots did take place in New York and Troy as have been so vividly described on this floor, we may be able to guard against their recurrence hereafter by wise provisions in our fundamental law. No sane man believes that if Fernando Wood had been mayor of the city of New York on the days of those riots, with such powers as are proposed in the committee's report, with the police under his control, that that mob would have been brought under subjection in the way it was, but, on the contrary, that rebellion would have run through the city of New York, and not only this, but through the entire State. It had multitudes of sympathizers there, as it had everywhere throughout the State, who, without the courage to encounter the danger themselves assumed by these ignorant masses, did all they could to aid and encourage them, in methods I will not enumerate, though well understood. The gentleman from Herkimer [Mr. Graves] has said that there is no more crime committed in the city of New York, compared with their population, than in other parts of the State of New York. Now I do not desire to speak disparagingly of the native population of New York city, as compared with the same population elsewhere. The proportion of ignorance and vice may be about the same. But, added to these, they have immense numbers of foreigners mostly of the more dangerous classes, so that the comparison, as regards the aggregate of the masses of the people there is very far from being a correct one; and I venture to assert that there is in the cities of New York and Brooklyn, in a single month, more crime and more violations of the rules of decency and good order, more gross and more petty crime, than has occurred in the county of Broome in sixty years. We have never had in that county a conviction for murder. We do not want a police force there, a few constables performing all necessary duties. I will put sixty years of the county of Broome against one month of the cities of New York and Brooklyn, as to the amount of crime and social disorder. If I cannot show a favorable comparison for the county of Broome I will drop the argument.

Mr. GRAVES—Does not the gentleman [Mr. Hand] know that what are called the "dead rabbits" and "shoulder hitters" are composed of our own people, and not those of foreign birth?

Mr. HAND—I do not know any such thing.

Mr. HARDENBURGH—I understand the gentleman to say that mobs were more frequent in the cities than elsewhere?

Mr. HAND—I did not say any thing about their frequency.

Mr. HARDENBURGH—I desire to call the attention of the gentleman to the fact that for years past we have had more difficulties in the rural counties than there have been in the larger cities.

Mr. HAND—I will say in reply to the statement of the gentleman that the aggregate of the loss of life and property by the July mob of 1863 in the city of New York, was greater than that resulting from all the mobs that ever existed in the rural districts of the State. Compared with it the mobs in the rural towns have been mere disturbances, and hardly worth mentioning, and would most of them scarcely be considered of sufficient importance to be published in the police reports of New York city; and yet, that mob, which for three days held that city in terror, in its career of murder and robbery, had its sympathizers among men high in station, because they thought, perhaps, the mob was advancing the interests of their party. I have given one reason, I think, Mr. Chairman, why the cities of New York and Brooklyn should be an exception in municipal affairs to our general principle of self-government. I think I may include the cities of Albany and Troy, likewise, as coming within that exception, because they embrace a large for-

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ogn population; not that a foreign population should not be protected in their rights, not but that a portion of that population are intelligent, but that the mass of the foreign voters are unfit, from their ignorance, and the condition in which they have been placed all their previous lives, to participate in our free government, especially where they constitute a majority of the voters; and if the whole mass of our population should be composed of such, I sincerely believe it would be impossible to maintain republican institutions, and I hold to that.

Mr. CHESEBRO—Did not the gentleman, in the early stages of this Convention defend the admission of a still larger class of more ignorant men to the right of suffrage?

Mr. HAND—No, I did not. I advocated the admission to the right of suffrage of about ten thousand negroes who do not vote, and who, compared with the other class, are gentlemen. [Laughter.] I will take the gentleman to Binghamton, and there look at the houses of both classes, and if he does not say so I will give it up. In his candor, and not in this Convention, where he is compelled to speak and act to serve the ends of his party, the gentleman would admit it. That is a class of not over ten thousand, and every day that you require a property qualification to enable them to vote, you do violence to republican principles as interpreted by all parties. They are well behaved, respectful and orderly, natives of our soil and understand and love our free institutions. I have never known one of them to misbehave himself at the polls in my life, but I have seen Irishmen—ignorant, insolent, intoxicated, but "dimmycratic"—to block up the polls and intentionally prevent respectable men from voting; and what is more, the negro generally votes right. [Laughter.] Is the gentleman answered?

Mr. CHESEBRO—In your way I am.

Mr. HAND—In my way?

Mr. CHESEBRO—It is satisfactory to me.

Mr. HAND—I was going to speak of another reason why in the city of New York and in the districts surrounding the capital we should make an exception to our general rule. The reason is that one is a commercial center, and we have business relations and pecuniary interests that give us an ownership in it that we have not in any sense in other cities. The government of the State of New York should not have reference merely to the people who reside there in providing for the government of the city of New York. It is a narrow view to take of it, and fails to give protection to those who are interested in it, through business relations and otherwise. I have an interest in the city of New York, as has every citizen of the entire State. Nearly one-half of the loose property in that city belongs to men who do not reside there. It goes there for the purposes of business, because that city is the commercial emporium. We are all mixed up with it. There is not a day nor an hour in the year but that thousands of persons who reside in other parts of the State are in that city on business. Their lives and their health and their property require protection. It is that consideration which gives us an interest and a right to inquire into the nature of that government. It being the central place of business, it is incumbent on us to secure, by the power of the State, and not leave it to that ignorant mob to say what sort of govennment shall exist in the city of New York to protect the lives, health and property both of the visitors to as well as the residents of that city. When pestilence visits our shores it is important that we have a health commission that shall give adequate protection to both citizens and strangers. In the report of the minority of the Commitee on Cities, etc., to which I had the honor to subscribe, we propose to retain the health and police commissions as of fundamental importance to the people of this State. Soap boilers, bone boilers, and sundry establishments detrimental to health, together with filthy streets, are to be found all over that city, and when a pestilence comes, if the question of the abatement of these nuisances is to be controlled by the voting population there, they will compel the authorities to be lenient in the matter and the nuisances will remain. There should be a power separate and apart from that mass of people to protect my health, my life and my property, when business or pleasure shall call me for a brief visit to the city of New York. The power should exist in the State, where, as the gentleman from Fulton [Mr. Smith] has truly said, sovereignty only exists. We should not lose our right to control the city of New York in these matters, which are fundamental to the interests of the people of the whole State, as to the proper government—the proper police department to protect my life and property, and the proper health department—when I am called to the commercial emporium. And about this capital, too, we have a large foreign element. Albany is becoming a large manufacturing city, and its manufacturing interests are to very largely increase in the future. Its water privileges are among the best this side of the Mississippi, and a large portion of them are still unimproved and unused. Then, too, this is the capital of the State. Our duties as citizens call us here, and the numbers that visit here annually are very large, and it is incumbent that we provide for the district about this capital a good local government. Troy, too, as has been shown by the remarks of the gentlemen from Rensselaer [Messrs. M. I. Townsend and Francis] equally needs the care of the State for providing for its local government. It is upon these grounds that I claim the right to have the government of these cities, at least their health and police departments, left under the control of the Legislature, leaving to them whatever powers of self-government may be consistent with the best interests of the whole State, for it is in the State where sovereignty resides. Can you give to those localities the powers which are proposed here in this report, without endangering the rights of the people of the great State of New York, in which exists alone political power? I claim the right to secure these interests by the power of the sovereignty of the State, and not leave it to the ignorant masses in our large cities. I speak of facts. There is not a gentleman here but believes what I say is true, and will generally admit it in private conversation. The

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gentleman from Herkimer [Mr. Graves] asked who composed the inhabitants of New York, as though he did not know. No man can be ignorant of the facts in the case. The remarks made by the gentleman from New York [Mr. Develin] let out the whole secret of the hostility of the people there to the police commissioners. The gentleman from Richmond [Mr. E. Brooks] admits that under the old system the police had become so indifferent to the interests of the people and their protection that it was the conviction of all good men there that something should be done. The gentleman admitted that the people demanded a change because the police system had become so bad. The gentleman from New York [Mr. Develin] did not deny that he was in favor of the change, but he says the power that controls the police has since passed into republican hands. So, then it seems that it is not commissions to which they are opposed, but to commissions not managed by the democratic party, for nobody pretends that, by those commissions good government has not been secured. I have not heard it asserted that good government does not exist in the city of Albany, in the city of Troy, and the city of Schenectady, under commissions, and that good government apparently has not been secured in the city of New York. I think that the statistics abundantly prove it, and I think that the people of the city of New York, even the democrats themselves, would feel very reluctant to go back to the old system; and though the political exigencies of the times make it incumbent upon them to oppose commissions and to make political capital out of them and the agitation of the subject, I think they would much prefer to have a commission under republican control than no commission at all. I think so because I have confidence in their good sense aside from their politics. All that has been said about the great fundamental principle of our institutions for self-government we know is true. I admit the truth of the doctrine most fully, under certain restrictions. I am in favor of self-government. I am a democrat in the true sense of the word, but I held early in the debates of this Convention on the suffrage question that the right to participate in government is a franchise and not a natural right. Every supreme government in the world decides for itself what classes shall enjoy that franchise, and weighs well the qualifications necessary in men to safely admit them to participate in the affairs of government. Certain persons are excluded from participating in the government in this country—minors, women, and insane persons. They are excluded for the reason that they are manifestly unfitted to exercise the right of suffrage, or that the best interests of society would not be subserved thereby, and is there any reason which will occur to gentlemen why the ignorant masses which largely preponderate in our large cities should hold the lives, property and health of our better class of citizens in their hands? Is there any reason why they should not be excluded from the control of that branch of the government? Why should the control of the police and health departments be taken from those who have the largest property interests in the city and be given to those who have very little interest in them? Why should that mass of people be allowed to determine the amount of taxes and what proportion each man shall pay, and especially be allowed to choose the men who are to arrest them when guilty of crime and fix the penalty of that crime? I think that the statement made by the gentleman from Rensselaer [Mr. Francis] ought to satisfy any reasonable man that the inhabitants of Troy and Albany are satisfied with the working of the capital police system. And I believe that testimony to any amount could be obtained from the city of New York and those holding business relations in that city, and those interested in its welfare, showing that the respectable and law-abiding portion of that city are satisfied with the workings of the police system there. I do not desire to occupy the time of the Convention in a lengthy discussion of this subject. I have given expression to my opinions and feelings and to my mind the reasons I have given are convincing why New York, Brooklyn, and the larger cities should be exceptions to the general rule for providing for the government of localities. And if in time it should become necessary to extend the system which prevails in New York, Brooklyn, Albany and Troy over every city in the State, then, sir, the sovereignty residing in the State should be exercised to that end.

Mr. DEVELIN—The gentleman from Broome [Mr. Hand] is in error in saying that I objected to the commissioners because they were under republican control. What I said arose in this way: the gentleman from Rensselaer [Mr. M. I. Townsend] read a portion of the charge of Recorder Hoffman on the trial of the rioters in New York, in which he praised the police commissioners, and said that the police there, was, probably, the best police in the world. I then remarked that the commission was composed of four members, two democrats and two republicans at that time, but that since then one democrat, on the expiration of his term, was not re-appointed, but a republican was appointed in his place whereby the board became three republicans to one democrat, and that since then one of the board had died, and that it was now two republicans to one democrat, and that this interference with the balance in that board had destroyed the confidence of the people of New York in that commission. I would have said the same thing if it had been made up of a democratic majority. The idea was that the commission should be operated without reference to politics; and in order to do it there was a balance of power put in the board by making it composed of two democrats and two republicans, and if, at the expiration of the term of one of the republicans, a democrat had been put in his place the same want of confidence in the commission would have existed. And while I am up I will make another statement. I understand the gentleman from Clinton [Mr. Axtell] charged that one of the judges of the superior court of New York had been convicted of a crime and that after his conviction he had been elected a judge of the court. I am informed that this was the statement made to the Convention by the gentleman.

Mr. AXTELL—What I did say was in reply to the gentleman from Richmond [Mr. E. Brooks],

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that the difference between the case of the judge of Oneida county and the case of the judge referred to was this, that while the judge of Oneida county was removed from office on account of his crime, the judge in New York was elected after his crime was known.

Mr. DEVELIN—I am informed that the expression used by the gentleman from Clinton was that a criminal had been elected judge of one of the courts of New York, and that the gentleman named as the judge so elected Judge McCunn.

Mr. AXTELL—That statement is correct.

Mr. DEVELIN—Will the gentleman please inform me of the nature of the crime of which Judge McCunn had been convicted, and when he was convicted?

Mr. AXTELL—I am not here to enter into details.

Mr. DEVELIN—I have known Judge McCunn for many years, and I pronounce such language by that gentleman a slander.

Mr. SILVESTER—I understand that there are many members of the Convention who wish to leave shortly after one o'clock. In order that they may be able to do so, I move that the committee do now rise, report progress, and ask leave to sit again, with the object of moving in Convention an adjournment.

The question was put on the motion of Mr. Silvester, and declared carried.

Whereupon the committee rose, and the PRESIDENT *pro tem.*, Mr. ALVORD, assumed the chair in Convention.

Mr. RUMSEY, from the Committee of the Whole, reported that the committee had had under consideration the report of the Committee on Cities, had made some progress therein, but not having gone through therewith, had instructed their Chairman to report that fact to the Convention and ask leave to sit again.

The question was put on granting leave, and it was declared carried.

Mr. DEVELIN—I move that the Convention do now adjourn.

Mr. McDONALD—I call the ayes and noes on that motion.

A sufficient number not seconding the call, the ayes and noes were not ordered.

The question was put on the motion of Mr. Develin to adjourn, and it was declared carried.

So the Convention adjourned to Monday evening at seven o'clock.

MONDAY, January 27, 1868.

The Convention met pursuant to adjournment.

No clergyman present.

The Journal of Friday last was read by the SECRETARY and approved.

Mr. M. I. TOWNSEND—I think it is evident that the attendance to-night must be very small. The season is exceedingly inclement, and the great body of the Convention that have been desirous to attend here to-night will be unable to be present, and I am entirely satisfied that we cannot transact any business which will be useful. For that reason I move that we do now adjourn.

The question was put on the motion of Mr. M. I. Townsend, and it was declared carried.

So the Convention adjourned.

TUESDAY, January 28, 1868.

The Convention met pursuant to adjournment.

Prayer was offered by the Rev. J. TANEY.

The Journal of yesterday was read and approved.

Mr. BICKFORD—I call for the resolution offered by myself on Thursday last.

The PRESIDENT—The Secretary will read the resolution.

The SECRETARY read the resolution as follows:

Resolved, That the Committee on Revision be instructed to add at the end of the article on future amendments and revisions of the Constitution in substance as follows:

"But no new Constitution or amendment agreed to by such Convention shall be valid until adopted by a vote of a majority of the electors of the State voting on the question of its adoption, either at a general election, or at a special election, as shall be determined by the Convention."

Mr. BICKFORD—I regret that I was not present when the article relating to future amendments of the Constitution was considered and adopted by this Convention. If I had been present I would have moved an amendment similar to the one contained in this resolution. According to the provisions of the Constitution of 1846, there was to be submitted to the people, to be determined by popular vote at the election of 1866, the question whether there should be a Convention to revise and amend the Constitution; and if the majority voted in favor of such Convention then the Legislature were required to pass an act providing for the election of delegates to the Convention. The power conferred by the Constitution upon the Legislature in the event of a vote in favor of the Convention, was simply to provide for the election of delegates and nothing more. To be sure, the Legislature in pursuance of their general authority to appropriate money might, and did provide for the payment of the members of this Convention, but the Constitution conferred no such express authority upon them. The people voted in favor of the Convention and we are here in pursuance of their determination. Now, sir, I believe that it is conceded by the best lawyers in this Convention and certainly it is a point upon which I have no doubt, although I do not claim to be by any means, a profound lawyer, that this Convention has the power, by authority of the Constitution of 1846, to revise and amend the Constitution of this State, and that they may promulge such amendments, or such alterations of the Constitution or a new Constitution, as the supreme law of this State, subject only to the Constitution of the United States, without any submission to the people at all. Such I believe to be the force of the words employed in granting this authority in the Constitution of 1846. We are a Convention to do what? Not merely to propose amendments to the Constitution, but we are a Convention to "revise and amend the Constitution," and it seems to me that we have this power to promulge a new Constitution without submitting it to the people at all. To be sure there is no member of this Convention that I know of that proposes to exercise such power, but that we have the power, I

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believe to be a fact which is conceded, as I said before, by the best lawyers of this Convention. Now, sir, I insist that this is too much power to confer upon a Constitutional Convention. That no one in this Convention proposes to exercise any such power is, perhaps, a matter of congratulation, but of no great consequence as to the question whether it is proper that we should have such a power. A new Convention may assemble at some future time which will be less scrupulous, and they may take it into their heads in a political excitement, to adopt important amendments, and to declare them valid, without submitting them to a vote of the people of the State. If we do not expect the power to be exercised, it is certainly very imprudent to confer it, because it may be exercised; and if we do not desire it to be exercised, and if it is not a proper power for a Convention to have, then let us prohibit it. Now, the article adopted by this Convention is in that respect precisely like the corresponding provision of the Constitution of 1846. It only provides for the election of delegates to the Convention, which is to be a Convention to "revise and amend" the Constitution—not merely to propose amendments. This resolution which I have offered is designed to instruct the Committee on Revision to add to that article as adopted, a provision that no amendment or new Constitution agreed to by the Convention shall be of force or valid until it is submitted to the people and sanctioned by them. I deem such a provision necessary and proper, and, indeed, several of my constituents, with whom I have spoken on the subject have insisted that this matter should not be left in its present loose form, and that this was too great a power to be conferred upon any body of citizens, however respectable, intelligent, or enlightened they might be. Once, already, in our history, an amendment has been adopted without submission to the people. The amendment to the Constitution which was made in 1801 was adopted in that way. However, it is to be borne in mind that the amendment then adopted was only an interpretation of the existing Constitution. It did not profess, in its terms, to vary the Constitution, but only to interpret one of its provisions. It was a disputed question whether the Governor had the sole power of nomination of officers to be appointed by the council of appointment, or whether such power existed in all the members of the council of appointment as well as in the Governor; and the Convention of 1801 decided that question in a judicial manner. But as that amendment then adopted was merely an interpretation of the Constitution, I apprehend that it cannot be cited as a precedent in favor of retaining the present provision. I insist, sir, that this is a dangerous power to confer upon a Constitutional Convention, and that we should expressly prohibit it.

Mr. S. TOWNSEND—I have listened with a great deal of satisfaction to that portion of the gentleman's remarks which I was able to hear, [laughter] (as I came in after he had commenced his remarks) and I hope that this resolution will lead to another practical provision, and that this Convention will do what the Convention of 1846 did, that is, enact a provision that no Convention can be called at twenty years hence, or at any other period, to revise and alter the Constitution on what I have styled a mere fragmentary vote. Under the provision as it has passed this Convention, theoretically a vote of ten men, if the others chose to stay away from the polls, could call a Convention to revise the Constitution. Now I think it is the duty of this Convention to instruct the Committee on Revision, to amend that article, so that nothing less than at least a moiety of the grand popular vote of the State shall call a Convention. It is too important a matter, sir, this calling of a Constitutional Convention, to leave it open to be done by a trivial vote. Unless some such provision is adopted you leave it open for a small number of people affected by any particular monomania, if I may use the expression, to call a Convention to revise the Constitution of the State, and it might be that at some not far distant time we should have a Constitutional Convention called without the sanction of the great body of the people, and merely to carry out the whim of a small number of persons attached to some of the isms of the day. I hope, therefore, that this part of our action will be conformed more nearly to the provision of the Constitution of 1846, so that nothing but a vote of half or more than half of the electors of this State shall suffice to call a Convention. With reference to the powers of the Convention I fully concur with the remarks of the gentleman who has just spoken. I have, from the very beginning, thought that members of this Convention were unmindful of its powers when they raised questions about how long we should sit, and when the submission of the Constitution should be made, because the Legislature had attempted, I will not say presumptuously, but illegally, to prescribe when we should submit it, and as to compensation of members, etc. I have already said, and I now say again, that this body possesses more constitutional power than any other that was ever assembled in the United States for its purposes. As to our ability to declare any portion of our doings by ordinance, I hold that we have that power. We have a precedent in the action of the Convention of 1801, and although the gentleman in speaking of that Convention said that it only had one object, I think that if he will refer to data he will find that it had two objects. However, the second was a matter of little importance, and I shall not dwell upon it now. But we have the still greater precedent of the Convention of 1777 which we have always been taught to respect. Many persons thought that the Constitution of 1821 was no improvement upon that of 1777, and some think that there has been no improvement upon it since. The Constitution of 1777 was declared by ordinance; and I say that we have a right to declare our Constitution or any portion of it by ordinance. I am not proposing that we shall exercise that power, but I mention it as a reason why a body with such powers should not be left open to be convened on an insufficient vote. I see that Jamieson, who, I believe, is the best authority upon that subject at present, says that of the various Constitutions adopted by the different States of this Union, more than half of them have

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been declared by ordinance. Now, thus understanding and recognizing the amplitude of our powers, how absurd it is to suppose that we are subject to the Legislature or under their control in the inferior matters of salary, and how unreasonable that the warrant of the president of this body, properly attested, for the pay of a member of this Convention, must not be respected by the Comptroller of the State as an ordinance of this Convention should be. I shall vote for the gentleman's resolution, and I hope that he will couple with it this other provision, that a vote of the majority of the people of the State shall be required to call any Convention.

Mr. BICKFORD—That is another branch of the subject which will come up at another time.

The question was put on the adoption of the resolution of Mr. Bickford, and it was declared carried.

Mr. COMSTOCK—I offer the following resolution, and ask that it lie on the table.

Resolved, That the Committee on Revision be instructed to amend the article on corporations so that the creation of corporations for literary, scientific, charitable and benevolent purposes, by special charter, shall not be prohibited.

Mr. A. LAWRENCE—I offer the following resolution, and ask that it lie on the table.

"That the Committee on Revision be instructed to amend the article on education and the funds relating thereto, which has been referred to them by the Convention, by striking out the words 'to the support of the Cornell University,' in the twelfth and thirteen lines, and the words 'so long as said university shall fully comply with and perform the conditions of the act of the Legislature establishing said university,' in the fifteenth, sixteenth, seventeenth and eighteenth lines; so that it shall read: "The revenues of the college land scrip fund shall each year be appropriated and applied in the mode and for the purposes defined by the act of Congress donating public lands to the several States and Territories, approved July 2, 1862.'"

Mr. ALVORD—I rise to a point of order.

The PRESIDENT—The gentleman will state his point of order.

Mr. ALVORD—It is that the gentleman from Schuyler cannot in this matter reach a reconsideration of the vote of this Convention refusing to do what he now proposes to do in this way.

The PRESIDENT—When this resolution shall be up for consideration the Chair will rule that the point of order is well taken. For the present the resolution lies on the table.

The Convention again resolved itself into Committee of the Whole upon the report of the Committee on Cities, Mr. CORBETT, of Onondaga (in the absence of Mr. Rumsey), in the chair.

The CHAIRMAN announced the pending question to be on the motion of Mr. Spencer, to strike out the first section.

Mr. COMSTOCK—The motion is to strike out the first section. According to the avowed intention of the mover and the general understanding of the committee, I believe that that motion if it prevails will be understood to dispose of the whole subject. It amounts to saying that we ignore this subject altogether, and that the whole article falls to the ground. I wish we could consistently with our duties as members of this Convention get rid of this subject in that summary manner. It would greatly shorten our labors, for I believe that except this there is nothing remaining before us calculated to protract our session for many days longer. But I think the question is so situated that we cannot altogether ignore it. We are obliged to give it some attention. To show this, I will make a few observations. Without indicating what my own particular views are in regard to the subject of cities, I only insist that this subject must be taken up and disposed of. Let me call the attention of the committee, in the first place, to the constitutional article which we have adopted and which is now in the hands of the Committee on Revision, on the subject of town and county officers, etc. The first section of it provides that sheriffs, clerks of counties, treasurers, registers of deeds and district attorneys shall be chosen by the electors of the county. The second section provides that all the county officers not provided for in this Constitution shall be chosen by the electors of the counties or appointed by the boards of supervisors or other county authorities, as the Legislature shall direct. Then follows this clause, to which I call the particular attention of the committee:

"All town officers whose election or appointment is not provided for by this Constitution shall be chosen by the electors of the towns or of some division thereof, or appointed by such authorities thereof as the Legislature shall designate. All other officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected or appointed as the Legislature may direct."

It will be seen by the committee at a glance that we have adopted an article by which all county officers are to be elected by the people of the county or appointed by some county authority; also, that all town officers are to be elected by the people of the towns or appointed by some authority of the towns. Our article is absolutely silent as to the government of cities and villages. We have done nothing on that great subject. So far as the work of this Convention has proceeded, we have said not one word upon it. Now, this omission will appear the more remarkable when we come to consider the corresponding article in the Constitution of 1846. That article provided, also, that all the officers of the counties shall be elected by the people of the county or appointed by some county authority; and then it proceeds, in the second section of the article, "all city, town and village officers whose election or appointment is not provided for by this Constitution shall be elected by the electors of such cities, towns and villages, or some division thereof, or appointed by such authorities thereof as the Legislature shall designate for that purpose." The Constitution under which we now live, therefore, takes up and provides for this subject by declaring that, not only all the county and town officers shall be chosen by the people of the counties or towns, or appointed by county or town authority, but also that all city and village officers shall be chosen in the same manner. Now, so far as the

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Convention has proceeded, we have adopted the Constitution of 1846 in respect to counties and towns, but we have said and done nothing in regard to cities and villages. I suppose there is an obvious reason why our work is now in that situation.

Mr. HARRIS—Will the gentleman from Onondaga [Mr. Comstock] allow me to suggest that a resolution has been adopted connecting the provisions of the first article adopted in relation to villages with towns, so that that provision is applicable to towns and villages, but not to cities.

Mr. COMSTOCK—That would provide very well for the villages, still leaving the infinitely more important subject of the cities of the State entirely unprovided for, unless we take up the report of the committee now before us, and dispose in some way of the subject. I suppose this subject was not disposed of and not provided for when we had the article on counties and towns under consideration, because there was a large and able committee to which the government of the cities was committed for examination and report. Now, sir, we have that report before us, we have the majority report and a minority report. They have some material points of difference, but they have more points of resemblance than they have of difference. I repeat, we are obliged to act upon this subject. Whether we take the minority or the majority report is not the present question. I desire to bring the deliberations and the judgment of the Convention to the real question, to the end that it may be disposed of. On looking at these reports, Mr. Chairman, I find that the first nine sections of the report of the majority propose the outlines of a city charter. The minority report does the same—it proposes an outline for a city charter differing in some material respects from the other. The fundamental question before the Convention will be found to be contained in the tenth section of each report, and that is that the State for the purposes of local government shall be divided into towns, cities and villages, and that no other local provision for districts shall be made, nor shall any territory be annexed to a city, except for the purpose of changing its boundaries. There is a great and fundamental question involved in that section, which must receive the attention of this Convention. This Convention will fail in its duty if it omits to declare what the fundamental political divisions of the State are and are to be hereafter. There is no duty of this Convention plainer than that of reaching the evasion of the Constitution under which the present government of cities has grown up. It must be reached and disposed of in one way or the other. Now, as I said before. I have not risen for the purpose of indicating precisely what my own views are of the frame-work of the government of the cities, but I find that all the arguments tend in two opposite directions. On one side it is claimed and insisted that all control of the cities shall be left in the Legislature, that the Legislature shall have supreme control of the municipalities of the State. On the other side it is claimed that the control shall be vested in the people of the municipalities, and not in the Legislature. If I have correctly understood the arguments of those who favor concentration of that control in the Legislature, they are founded mainly on the idea that the State is sovereign and the cities are not, that the State wields all the sovereignty there is within its borders, and that the cities wield none of it. It is therefore said to be an abdication of some portion of the sovereignty of the State if the municipalities are left to their own self-control. I have in my hand the minority report upon this subject, submitted by Mr. Francis, in which I find the doctrine to which I have referred. He says: "As one of the Committee on Cities, I wish to say that I disagree with the report of the majority in this, that it proposes the establishment within the State, under the name of city governments, of local sovereignties superior to and above and beyond the control of the State itself, thus applying to the State of New York the same obnoxious doctrine which the rebels of the South sought to enforce for their States with respect to the Union. This whole idea of city independence from the State control is the same in principle as the old southern idea of State independence of federal authority." Now, the sum and substance of this argument has been reiterated again and again in the course of this discussion, and my friend from Jefferson [Mr. Bickford] submitted several maxims, or axioms as he called them, of which this argument formed the central idea, to wit: That by remitting the people of the municipalities essentially to self-government and self-control we abdicate the sovereignty of the State, or at least that it amounts in some degree to an abdication of the sovereignty of the State. Now, Mr. Chairman, I wish to make an observation or two to relieve the subject from that difficulty. Whatever it is wise and expedient to do in regard to the government of cities, that argument in my humble judgment is wholly foreign to the subject. I accept the idea without reservation that the State is sovereign over every part of it. The sovereignty of the State is a unit. The State itself is a political unit. All the counties, towns, cities and villages of the State are but parts, but fractions of that unit. Every county, every, town, every city in the State is within the State in a political not less than in a geographical sense. But, sir, what is the State? That is the question. The State is not the Legislature; the State is not the judiciary; the State is not the executive; nor is it all of them together. With us the people are the State. A great monarch once said, "I am the State," by which he meant that he was the source of all authority within his own dominions. And that is the simplest idea of sovereignty, where the will of the monarch is the law, and the only law, throughout his dominions. According to our institutions the people, and the people alone, are sovereign. It is their will, and their will alone, which is the supreme law of the State. Every branch of the government exercises only delegated powers, powers which the people delegate to them when they make their Constitution. Your Legislature cannot step outside that delegation, nor can your judiciary, nor can your executive. Therefore, when we say the State is a sovereignty, we mean that the people are the sovereigns, and that they ultimately govern the State. Now, the only way in which the people exercise any immediate act

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of sovereignty is when they ordain and proclaim their written Constitution. That is the only mode in which the people act upon any individual or upon any particular class of the population of the State. They make their Constitution, and delegate certain powers to the Legislature, or rather with us they delegate all legislative powers, subject to the restrictions which the Constitution contains. It is, therefore, exceedingly evident that there is here no question of the abdication of State sovereignty. It is a question of what power we will by our Constitution delegate to the Legislature and what power to the people of localities or to the government of the cities.

Mr. BICKFORD—Will the gentleman allow me a word?

Mr. COMSTOCK—Yes, sir.

Mr. BICKFORD—I, for one, said nothing about the abdication of State sovereignty. I admitted that State sovereignty would still exist, in the sense in which the gentleman claims; but I contended that it was an abdication of government, not of State sovereignty.

Mr. COMSTOCK—The people will govern all parts of the State. They will govern every individual of the State. They will govern the cities; but whether the people will govern them through the Legislature or through some other instrumentality is the question before this Convention. It is not a question whether the State is or is not sovereign over every municipality, but whether the people of the State shall make the Legislature sovereign over it. The Legislature is not the people, nor is it the sovereignty of the State. Now, suppose that our Constitution, whatever it may be, shall be approved by the people. If we leave the cities under the control of the Legislature, that will then be the will of the people in the exercise of their supreme sovereignty. If we leave the people of the cities to govern themselves, that will be equally the will of the people, and in either case it will be the sovereignty of the State, exercised in the one mode, or in the other mode, which will govern the municipalities of the State. I accept, also, Mr. Chairman, the doctrine which was laid down with so much emphasis by the gentleman from Rensselaer [Mr. M. I. Townsend], that where allegiance is due, protection is due. He said that he owed allegiance to the State, and I know that as well as he knows it. He said that he therefore should come to the State for protection, and he insisted that allegiance and protection are mutual obligations. They are, sir, mutual obligations, and they are perpetual obligations. As no man, short of expatriation, can throw off his allegiance to the State, or to the federal government, so no man short of expatriation, can withdraw himself from or lose the Constitutional protection which is due to him, as the consequence of that allegiance. But, sir, the gentleman was mistaken if he supposed that his allegiance was due to the Legislature. He owes no allegiance to the Legislature. I owe no allegiance to the Legislature. There is no man in this Convention or elsewhere that owes any allegiance to the Legistature of this State. We owe obedience to their laws, when they are enacted, in accordance with the Constitution. Outside of that we do not even owe them obedience, much less allegiance. The doctrine of allegiance and protection, therefore, is not invaded, whether we adopt one mode or the other of governing the municipalities of the State. The allegiance of each individual is due to the people of the State in their mass, in their sovereignty, and the people in their collective sovereignty will protect every man, whether he lives in a city, or elsewhere, and they will do it through legislative action, or through such other instrumentality as they shall think wise when they adopt and proclaim their organic law. There are some lighter arguments which have been advanced on this subject, arguments of far less significance, and to which I will allude only for a moment. I have regretted very much to hear partisan appeals made upon a question of this nature and import. My honorable friend from Rensselaer [Mr. M. I. Townsend] did appeal to party allegiance, to maintain a certain view upon this question in this Convention. Now, I have but a word to say on that subject, and I will say it just as I would say it if I were one of that political majority to which he addressed himself. I say you cannot afford to frame your Constitution upon any such view as that. You cannot afford to dispose of this subject upon any such grounds. Why not? Why, I say, just as I would say if I belonged to his party—you cannot do it, because you are not the masters of the situation. Whatever effect your appeal to the party may have here, it will have no effect outside of this hall. When you go beyond these walls, I repeat, you are not the masters of the situation. Your work is to be approved or condemned by a great people, to whom it is to be submitted, and you cannot afford to make a disposition of this or any other subject which will alienate from your Constitution great masses and numbers of the people. I believe, Mr. Chairman, that we are making a Constitution which upon the whole, will be a great improvement upon the one we are now revising; and I yield to no man in my anxiety to put it before the people in the best form, and in the most acceptable way we can. Look over the cities of this State, and you will find that they embrace about one million and three-quarters of souls much nearer half than one-fourth the population of the State. Your Constitution is to be submitted to the people of those cities, as well as to the people of the residue of the State, and, if you array the solid vote of those great municipalities, or any considerable part of that vote against your work, there is no hope whatever of its acceptance. I do not wish to pursue this discussion. It has been my object simply and briefly to show to the committee as well as I could, that the subject is in a situation where we cannot omit it, where we cannot ignore it, where we must act upon it in some form or other; and also to relieve the question of some of those inconsequential arguments which have attended the discussion. Before I sit down, however, I wish to draw the attention of the committee again, for a few moments, to the Constitution of 1846, and the consequences which have grown out of it in the way of interpretation. The article which I have already read provides,

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in exact terms, that all city, town and village officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, towns and villages, or some division thereof, or appointed by such authorities thereof as the Legislature shall designate for that purpose. Now, Mr. Chairman, this is a plain provision that all such officers of cities shall be elected by the people of the cities, or appointed by some city authority. There is the Constitution; its meaning is plain—no man can mistake it. Every officer concerned in the government of the city is to be elected by the people of the city, or appointed by some authority thereof. That is your Constitution. And now look at the cities—look particularly at the city of New York. I suppose it is true that the majority of the officers concerned in the government of that city to-day are not elected by the people of the city, and are not appointed by any authority thereof. How has that come about? I repeat, there is your Constitution requiring that your city officers shall be elected, or appointed by the city authorities, and there is the fact that in several of the great cities of the State the majority of the city officers are not elected by the people of the city, or appointed by any authority thereof. How has that come about? Why, Mr. Chairman, it has been done by the mere subterfuge of adding some adjacent territory to a city, and making it a new political division of the State, a political division which had never been thought of before. We have existed as a sovereign State for almost a century, and until after the adoption of the Constitution of 1846, no man in this State had ever heard, no man in this State had ever dreamed, of any other political division than the county, the town, the city, and the village. The government of cities, therefore, has been usurped by the Legislature, under the mere transparent subterfuge of adding adjacent territory, and thus creating a new political division of the State. These political divisions of the State were regarded, when that Constitution was made, as fixed, as much so as any thing else which that Constitution contains, entirely fixed and settled as the very pillars of constitutional law in this State. Now, sir, it becomes me to speak with entire respect of the decision of the court of last resort which sustained the constitutionality of these commissions. I had, and I still have my own convictions about it. But all that the court said, all that the court decided, was that this legislative evasion of the Constitution was successful—that it was simply a successful evasion of the plain intent of the Constitution.

Mr. HUTCHINS—Mr. Chairman, I should like to ask the gentleman what he means by an evasion of the Constitution? How can the Constitution be evaded?

Mr. COMSTOCK—I mean, sir that the act of the Legislature in creating this new political division of the State, was an evasion of the Constitution. The Constitution can be evaded; and the gentleman has been a lawyer long enough to know that the Constitution can be evaded, and has been evaded by a mere subterfuge. When I speak of the evasion of the Constitution, I have reference to what its plain intention is, and a legislative act which gets around that intention, because it is not expressed in any literal direct provision, is what I mean by an evasion of the Constitution; and I repeat there never was a more transparent evasion of it, than the one of which I have just spoken. I do not choose to dwell longer upon that branch of the subject. What I want to say to this Convention is simply this: Let us put what we mean in the Constitution. If we mean that the cities shall be to a greater or a lesser extent under the control of the Legislature, why let us say what we mean, and leave not only no necessity, but no possibility, of a resort hereafter to a similar evasion. Why do you want to create new political districts in the State? Do we need in our organic law any other political divisions, than the town, the county, the city and the village? Not at all. If you only make the Constitution as you want it in respect to the county, town, city and village, you want no other political division. Therefore, I say, whatever power you think best to give to the Legislature, give it to the Legislature in terms, over cities and towns, and leave out of your Constitution this possibility of creating new political divisions of the State. You cannot leave in the Legislature this power of manipulating the organic divisions of the State, without danger to the principles of your Constitution, without leaving in your Constitution the seeds of its own subversion. It has turned out that the Constitution of 1846 contained the seeds of its own overthrow, because if the Legislature could thus overthrow essentially the government of cities, it can equally overthrow the government of your counties to-day. To effect this, the Legislature have nothing in the world to do except to put together two counties or parts of counties, or more, making a new district, which, instead of being governed by your board of supervisors and the officers named in your Constitution, may thus be erected by the Legislature into a department and governed by a pro-consul or prefect. I repeat, therefore, Mr. Chairman, that whatever it shall be the conclusion of this Convention to do in regard to the government of cities, let us do it plainly and not leave it to indirection. If it is the desire and purpose to give to the Legislature power to place commissions over cities, let it be so stated in terms instead of leaving it to a legislative evasion, for if you leave this power in the Legislature there is danger of greater usurpations hereafter than we have yet experienced. Therefore, I am in favor of the tenth section embraced in this report, or, if it shall not be accepted by this Convention, then I am in favor of the corresponding section embraced in the minority report, for they, each of them, prohibit the power of creating new political divisions in the State, except, as the minority report reads, "for sanitary and police purposes." Let me say on this subject, further, that you do not want to leave in this Constitution power to create new divisions for sanitary or police purposes. If you wish that the Legislature shall control the police and the health of the cities, say so. You do not want any new political division for this purpose. Say it directly in regard to cities. It may be wise to say that, I express no opinion about that, but let us make our Con-

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stitution so plain that it cannot again be invaded in the manner it has been.

Mr. M. I. TOWNSEND—I have one word which I wish to say in answer to the gentleman from Onondaga [Mr. Comstock]. He says about the remarks I previously made, that I claimed that allegiance and protection were corresponding duties, and that as I owed allegiance to the State it was the duty of the State as such, to protect me. The gentleman says, in addition to my remark, that it could not be that I owed allegiance to the Legislature, and that therefore, I have no right, as the argument runs, to claim that the Legislature should have the power and the duty imposed upon them of furnishing me personal protection. Is not the argument of the learned gentleman sophistical? I ask it respectfully, for I have great respect for every thing that falls from that gentleman—is it not sophistical? I owe allegiance to the people of the State. After our Constitution is established and is working, I know of but one mode through which I can reach the people of this State (for the people are the State just as much here as Louis XIV. supposed that he was the State in France), except through the Legislature. And for this purpose the Legislature is the State, for it is in the legislation of the Senate and the House of Assembly that the people energise. Is there any other way in which the people of the State can energise for my protection? Then, sir, if you should tie up the hands of your Legislature so that the Legislature cannot energise for my protection, then the Constitution has decided that the people of the State shall not energise for my protection. If that be not good political philosophy, I would like to hear some gentleman—the gentleman from Onondaga [Mr. Comstock] or some other gentleman upon this floor—explain to me why this is not good. If the Constitution says that I, for my own protection, shall depend upon the people of the eighth ward in the city of Troy, in which my home happens to be, for protection, then the people of the State of New York have, by their Constitution, provided that they will not furnish me protection, but that I must look for protection to the people of the locality in which I have my abode. And under that very view that men owe allegiance to the power that furnishes them protection, as my colleague [Mr. Francis] has well said in his report, the people of the Southern States were not protected and could not be protected by the general government, and they lent themselves to the damnable service of the rebellion. I think the gentleman from Onondaga [Mr. Comstock] is answered upon that point. If he be not, I hope some one else will show wherein the fallacy of my position consists. But, sir, the gentleman from Onondaga very properly and in a manner worthy of himself has deprecated the introduction of any political feeling into questions of this kind. Now, sir, for myself, I believe I do right in consulting political feeling when I believe that the doctrines of the great party with which I act are more consonant with the well-being of the State, with the well-being of society, and with the well-being of the world, than the doctrines of the party acting in opposition to it. And, sir, as the people of this State, if they shall ever take the trouble to read the debates of this Convention, may not understand some things that are visible to my eyes, and as perhaps my friend from Albany [Mr. Harris], whom I do not now see in his seat, and my friend from Onondaga [Mr. Alvord], whom I do now see in his seat, may be inclined to run away with the notion that the political feeling is all on one side here, and perhaps confined to a few rash spirits like the gentleman from Rensselaer who now occupies the floor, I wish through you, who have eyes, to ask what is the meaning of certain men flocking into this hall on this occasion "like clouds and as doves to their windows?" Why is it that we see men here for the first time during this session of the Convention since the recess? Why is it that the benches of so many courts in the city of New York and of other distant cities of the State that perhaps really need those who have been elected to occupy and fill them, are vacated for the purpose of enabling the gentlemen who sit upon those benches to come here and occupy their seats in this hall? It is perfectly delightful to see their faces. [Laughter.] It is very pleasant to have them here; but how happens it that, in the providence of God, they come just at this time, and that other gentleman who have not been present during this session, and who have not entered the hall during the last session previous, appear in full proportions in this Convention to-day? Certainly there is no political feeling about it! The lamb is lying down with the lion and the leopard with the kid. [Laughter.] My friend from Onondaga [Mr. Alvord and my friend from Albany [Mr. Harris] are lying down in pretty much the same company that the lamb lay down in [laughter], and if they get up safely, and do not change their nature, I shall feel that the millenium has come and that such things can be done with impunity. [Great laughter.] It is very well understood, as I said the other day, that the gentlemen upon the other side of politics in this hall act as a unit—act together. They have no sort of difficulty in satisfying their own minds on the political rights and duties of the Constitution. Now, sir, I do not propose myself to lie down with either the lion or the leopard, and just now, if I know myself, I shall not put my hand over the cockatrice's den. [Laughter.] My friend from Albany [Mr. Harris] and my friend from Onondaga [Mr. Alvord] may do it, and so may any other gentleman in this hall who wishes to go with them. I am a republican voter, and I believe that the republican party have the most correct notions of government at the present time. There are some heresies in the republican party which I cannot adopt. I believe there are individuals in the republican party who hold sentiments that I cannot adopt, but I do not believe those sentiments are the sentiments of the great party with which I act. Sir, if a measure arose in which I believed that the views of the republican party were not for the best interests of the State I should act upon my conscience and not upon my politics; but I believe in this matter that the republican party in their action in protecting the good people in cities of all parties, have acted for the best,

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for the interests of the State and more in accordance with political philosophy than any other party would have acted. And, now, while I am on the floor, I take leave to refer to two facts in regard to the working of the capital police in this district that I did not mention the other day. In 1864 when the great presidential election that was exciting the whole country was about to occur, the general government felt it to be its duty to itself to send two regiments of infantry and eight pieces of artillery, and locate them between the cities of Troy and Albany for the purpose of preserving the public peace and for the purpose of preserving intact the public property, in what is now called the capital police district, at the arsenal in Watervliet. Bear in mind, we then had not the capital police; and for more than six weeks the exigencies of the general government required, in the opinion of those who administered its affairs, that this military force should be there. And I should like in this connection to appeal to my friend from Albany [Mr. Harris] to know whether, at that time, he did not believe it to be necessary to withdraw from the fields in the front where our armies were battling with the enemies of the republic two regiments of infantry and a park of eight pieces of artillery for the preservation of order and the preservation of the public property in this very district which the gentleman now proposes to deliver over to the accidents that shall arise when there is no control over the popular passions of the mob in these two cities.

Mr. HARDENBURGH—Does not the gentleman know that the bloody July riots to which he refers, occurred after the introduction of the metropolitan police system, and at a time when the people had no voice in the choice or selection of their police force?

Mr. M. I. TOWNSEND—Yes, sir; and that gentleman well knows, as I have already stated in this Convention, that, had not the police in the city of New York been in more loyal hands than those of Fernando Wood, what was then a mob, costing but a thousand lives and the destruction of some million and a half of property in the city of New York, would have been a revolution. Now, sir, that other circumstance to which I wished to refer is this—and I state it in answer to the cry that the people in this district are heavily taxed and burdened for a political purpose, without any corresponding benefit. In the city of Albany, I see it stated in the press that, for the last three months, there has not occurred a single fire which called for the services of the fire department. Now, sir, if there is a gentleman upon this floor who believes this a burden, "an intolerable burden," to save the people from the ravages of fires that have hitherto prevailed in this district, to impose upon them the very small sum that is paid to support these police, certainly I cannot interfere with the workings of gentlemen's minds. But I present these facts that gentlemen in this Convention may judge for themselves of the working of the system here where it is adopted. The gentleman from Onondaga [Mr. Comstock] says that probably a majority of the officers holding power, and who exercise influence in the city of New York, do not owe their election or appointment to the people directly. I think the gentleman will find upon looking at the interior facts in the case that, the whole number of commissioners holding commissions in every form in the city of New York does not reach thirty, and that the minor officers holding positions under those commissioners do not reach any more, at all events do not greatly exceed the additional number. Why, sir, New York swarms with men, properly, I admit, holding office under the common council and under the board of supervisors and other local authorities. I did not rise for the purpose of making any extended remarks, but mainly to present what I have stated on this occasion.

Mr. MORRIS—The question before the committee is one of so much importance that it should be most fully debated. It is, therefore, for this reason that I rise to express the views which I have upon the subject. In reading over the first section of the article, I am at a loss to find any fault with it. It seemed to me to provide every thing that is necessary in order to empower the mayor to fulfill the duties with which he must necessarily be intrusted. He should be the responsible official in the city. I hold to the military principle that the power to praise should have the power to punish; and we know that no servant is so faithful as when the eye of the master is upon him, that eye being accompanied with the power to punish. In looking over the minority report of the gentleman from Rensselaer [Mr. Francis], I find he proposes that the superintendent of police shall be appointed at the capital of the State. He contemplates making a system which shall extend throughout the State. This, for one, I seriously object to. It would be, in point of fact, establishing a standing army throughout the State under another name. I believe that no persons can govern themselves so well as those who have interests at stake. The people are tired of being governed from remote localities—from Albany by the Legislature. The two prominent ideas throughout the State seem to be that the Constitutional Convention should give us a good judiciary and would deprive the Legislature of power over localities which are remote from the seat of State government. The gentleman from Albany [Mr. Harris] has so admirably defined the position I occupy that, I have only to refer to his remarks in order to express my own ideas; for I agree with them. I regard him as one of the most intelligent and learned gentlemen of the party to which he belongs, and his remarks show that, although this system of central government was a creation of the republican party, they are becoming dissatisfied with it, and it is more so with the people throughout the State. I do not have any apprehension that we shall ever again be troubled with mobs or riots. The history of past riots shows conclusively that our national guard can be relied upon in addition to the police, and I will say, by way of parenthesis, that no one doubts for a moment the efficiency and excellence of the police as it now exists. The only thing which is susceptible of criticism is the way in which the police are appointed. That way is contrary to the spirit of republican

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government; but should we find in the case of an outbreak or mob or riot, that the police were not sufficient to maintain order and put down the disturbances, we have only to call upon the national guard, of which we have ten thousand men in the city of New York, well armed and equipped and disciplined, who will fire upon the populace composed of their own relatives and friends, as the past will show, if need be, and should these be not sufficient and this Constitution is adopted, the reserve militia throughout the State, officered by reserve officers, could be in a few days armed and equipped and ready for any emergency. They will come along singing the words of that popular song during the last war, with a slight alteration,

"We are coming, father Governor, three hundred thousand more."

I cannot see, Mr. Chairman, that any better substitute can be offered for this section that is now moved to be stricken out, and for one therefore, I hope the section reported by the committee will remain.

Mr. HUTCHINS—I for one feel compelled, Mr. Chairman, from a sense of duty, to dissent entirely from most of the provisions contained in the report under consideration. To three of the sections—and to which I will refer—I see no objection. It seems to me, however, that we should be guilty of doing a very unwise thing, to insert the other sections contained in the report in the fundamental law of the State. The provision abolishing the board of supervisors in the city and county of New York, I believe we all agree to, and for this reason: that there is already a board of aldermen in existence in the city which could discharge the duties now performed by the board of supervisors, with equal fidelity, care and protection of the city's interests, and with much less expense, taking the salaries of the board of supervisors, and the officials connected therewith into account. Sir, there is another provision in the article which I would save, and considering the assertion made by the able and eloquent chairman of the Committee on Cities [Mr. Harris], I will say it was a most extraordinary thing that that section should have found its way into the report. If I recollect aright, he said that this whole business of commissions was ruinous in theory, ruinous in policy, and ruinous in practice, and would be destructive to the State if persisted in. I believe I quote his words, and yet in the very article under consideration, before he closes it, he provides for the appointment of a commissioner by the Legislature to do a particular work; that work is to revise and collate the laws relative to the city of New York and report them to the Legislature with such recommendations as the commissioners might suggest for the action of the Legislature, in order to give good government to the cities. Another section, sir—and it is the last reported—I do not see how the gentleman can regard as in consonance with his theory upon the idea that to have a commission to do any thing in a locality, is in direct conflict with the theory of self-government. Section 16 reads thus:

SEC. 16. Nothing in this article contained shall effect the power of the Legislature in matters of quarantine, or relating to the port of New York, or the interest of the State in the lands under water and within the jurisdiction or boundaries of any city, or to regulate the wharves, piers, or slips in any city.

Why allow a commission to be appointed in the city of New York to take charge of the wharves, piers and slips? Does not that concede the argument for which we are contending? Does it not concede that in certain cases commissions may be necessary and authorized by law. The question of what is to be considered indispensable to the existence of a really effective government of the city of New York is one that may well challenge our best and most disinterested efforts. A city in its strong contrasts unlike other great cities of the world. Crowded together upon a narrow strip of land, some ten miles in length and an average breadth of one mile, are the people of all climes and nationalities; the cool, calculating New Englander, the phlegmatic German and the fiery Celt. The last census of the city of New York disclosed the fact that there were 77,475 voters of foreign birth, to 51,500 native voters, and 151,838 aliens. The increase in the naturalized vote since the census was taken, is I think at least 20,000, whereas I very much doubt whether the native vote has increased 5,000, the tendency being for men of moderate means and native birth to leave the city and find homes for their families in the quiet of the country adjacent to the city. If I am right, the vote of the city of New York is in the proportion of two to one in favor of voters of foreign birth. New York is in population the largest American, Irish, German, and Jew city in the world. I may add, without exaggeration, that it contains within its boundaries representatives from every nationality on the globe. Here congregate, also, the depraved, the vicious, those who are notoriously restive under any legal restraint. This great cosmopolitan city, the commercial metropolis of the continent, its port filled with shipping from every clime, its streets crowded with residents and sojourners intent on business, pleasure and crime, and through whose gates come swarming myriads of immigrants, must have some effective form of city government. What that shall be presents a field for most careful consideration and enlightened statesmanship. The idea prevails to some extent that localities, whether cities, towns or villages, have a natural right to self-government, and that the interference of the State is a sort of usurpation. We hear a great deal about independence of municipalities, unjust and tyrannical legislation at Albany, unjust interference with chartered rights, etc. No political term has been more abused than this cry of municipal independence. Our political unit in the State, the State sovereignty, lies in the people of the whole State and nowhere else. It has never been and never can be parceled out among towns, counties and cities. The position for which I contend, in reference to the question which we are considering, commences just where the argument of the gentleman from Onondaga [Mr. Comstock] ends. Shall the State sovereignty be given up to any locality so that

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the people, speaking through this Convention, which provides for a Legislature, shall have no further control over the matter?—a thing which has never been done in the history of this State, sir, and which has never been done in the history of any State of the United States, or by the government of the United States, is proposed to be done here to-day, to abdicate the State government and State authority, and place it in the hands of a locality, where it is beyond the reach and power of the State for all time to come. Now, sir, pardon me for one moment while I refer to the reasons which are given by the various gentlemen for their advocacy of the majority report of the committee, for that is what I am considering now. That report proposes to do two things: first, to give the mayor of the city of New York, for the time being, the full and unqualified power to appoint every officer and every official within the city limits, and to remove him at his pleasure. It proposes to go further, and to provide that from this time there shall be no other territorial division in this State than cities, counties and towns, as prescribed in the Constitution, so as to prevent any other territorial division of the State for any purpose for all time to come. My friend, the chairman of the Committee on Cities [Mr. Harris], says this is necessary to secure to the cities of the State local self-government. He says that the commissions controlled by State authority are false in principle, ruinous in policy, and deprive the cities of a right always exercised by them. Third, that they are an effective party organization, contrary to the spirit of our institutions, is the language of my friend from Erie [Mr. Verplanck]. But the question immediately occurs, how less effective a party organization will they be when appointed by the mayor or elected by a party in the city? Fourth, that the police commission is a great departure from the principles of republican government. Fifth, that the State commissions are the most expensive form of government for the cities, and the chairman of the committee [Mr. Harris] alleges that seven-eighths of the amount raised by taxation in the city of New York is expended by the State commissions; and another member of the committee, the gentleman from Onondaga [Mr. Alvord], stated that three-fourths of the amount raised by taxation was expended in the city of New York by State commissions. Sixth, that this Convention was called, among other reasons, for the purpose of relieving the cities of the State from the burden of commissions. Let me state, in reply to this assertion, that in the city of New York there were only about twenty thousand votes cast in favor of this Convention, in a total vote of about 115,000, and that there was a clear majority of ten thousand cast against the calling of the Convention. If there was this cry for relief for the city—if this Convention was called for the purpose of relieving the city of New York, "groaning under the burdens of these commissions" which we have heard so much of here—how comes it that with 49,000 majority against the republican ticket in that city, when the vote was taken on the question of calling a Constitutional Convention there were but 19,000 votes cast in favor of it out of a total vote of 115,000? I think the matter of government of cities had little to do with the calling of this Convention. The cities, as a general thing, cast their votes against it, whereas the rural districts voted with substantial unanimity in favor of it. I think, sir, that two considerations led to the calling of this Convention; one was a reform in the judiciary, and the other was a reform in the management of the canals. I have given the arguments of those who are in favor of the report under consideration. I have referred briefly to what is proposed to be done to remedy the evils alleged to exist, namely, to give the power of appointment to the mayor, and to provide that no territorial division of the State shall hereafter be made which shall enable commissioners to be appointed by State authority. Now, let us in the first place (as I wish some landmark to guide us) ascertain what are the legal rights of the State over cities, what power the State possesses over the subject. I will not use my own language here, but will quote the language as it is laid down in our books. I quote in the first place Angell & Ames' elementary law upon this subject. I think it is as good law on the subject as that which has been laid down by the chairman of the Committee on Cities [Mr. Harris].

Mr. COMSTOCK—I have no doubt whatever of the supreme power of the Legislature over cities, unless the Legislature is restrained by the Constitution. That is the only doubt there is, and the question is how we shall make our Constitution in that regard.

Mr. HUTCHINS—I heard the gentleman claim that there was an evasion of the Constitution in the decision of the court of appeals upon the police law.

Mr. COMSTOCK—Not in the decision, but in the act of the Legislature. That is the way I stated it.

Mr. HUTCHINS—Angell & Ames use this language:

"SEC. 31. The main distinction between public and private corporations is, that over the former the Legislature, as the trustee or guardian of the public interests, has the exclusive and unrestrained control, and acting as such, as it may create, so it may modify or destroy, as public exigency requires or recommends, or the public interest will be best subserved. The right to establish, alter, or abolish such corporations, seems to be a principle inherent in the very nature of the institutions themselves; since all mere municipal regulations must, from the nature of things, be subject to the absolute control of the government. Such institutions are the auxiliaries of the government in the important business of municipal rule, and cannot have the least pretension to sustain their privileges or their existence upon any thing like a *contract* between them and the Legislature, because there can be no reciprocity of stipulation, and because their objects and duties are incompatible with every thing of the nature of a contract."

Now, Mr. Chairman, the gentleman from Onondaga [Mr. Comstock] was upon the bench when the case of the People *v.* Draper, which involved the constitutionality of the police law, was decided, and he dissented from the judgment of the court on that occasion. He undoubtedly has read

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the opinion of the court delivered by that able jurist, Judge Denio. I quote from that decision to show that Judge Denio's opinion does not correspond with the opinion of the gentleman from Onondaga [Mr. Comstock], that this law of the Legislature was an evasion of the Constitution, and also to show that, in Judge Denio's opinion, a provision like that which is now sought to be inserted would be of all things most injudicious and impracticable. He says:

"Nor can I perceive that any arrangement of the Constitution which looks to the existence of counties or cities, or the co-operation of county or city authorities, is broken in upon or in any respect interfered with by the bill. It may be said that, as matters of police have generally been of local cognizance, an act which shall unite for police purposes several counties and cities causes the local divisions to be less distinctly defined, and this is true. But this, if it proves any thing, proves too much. The argument would stamp the distribution of administrative authority among the local divisions with the attribute of absolute permanency. Every change in this respect would intensify or detract from the distinctness with which these divisions were marked when the Constitution was framed. Within our recollection, the arrangements for the support of the poor have been the subject of changes which have taken power from the county authority and given it to the towns, and the reverse. District attorneys were once appointed for several counties. Afterward, one was appointed for each county. The same features are found in respect to common schools. In the administration of this system, both town and county agencies are employed; but changes are often made by which the power is taken from the one and given to the other. If we were to establish the principle that the Legislature can never reduce the administrative authority of counties, cities or towns; can never resume in favor of the central power any portion of the jurisdiction of those local divisions, or change the partition of it among them, as it existed when the Constitution was adopted, we should, I think, make an impracticable government."

I cannot state the proposition plainer and more strongly than it has been stated by Judge Denio. Now one word in relation to this great power which it is proposed to put into the hands of a single individual if this section is adopted. The amount expended in the city of New York for the year 1867 for city and county purposes was twenty-four millions of dollars. Now, sir, if this provision is adopted, the mayor of the city of New York would have under his control and at his absolute disposal, through officers employed by him, this vast amount of money, twenty-four millions of dollars in one year; and, sir, it would not stop there, for the amount will undoubtedly increase from year to year, and in a short time that sum will be doubled. And, sir, there is to be added to this, an amount counted by millions annually, which is expended by officials in what are called local improvements, street openings, flagging and curbing streets, building sewers, and improvements of that description. This sum must also be added to the amount of twenty-four millions. Now, sir, we have had on one occasion a question before us which excited some discussion; it was as to the policy of allowing the consolidation of railroad corporations. When the report of the Committee on Corporations other than municipal was under consideration, the gentleman from Albany [Mr. A. J. Parker] offered an amendment which was in the following words:

"No consolidation of railroad corporations shall be authorized when the aggregate capital shall exceed fifteen millions of dollars."

Afterward, the amount was changed to twenty millions, and in that shape the amendment was adopted by this Convention. And what was the argument in favor of it? It was that by the consolidation of these great companies, you thereby put in their hands, and in the hands of one man, the president of the corporation, the power of controlling its expenditures, and that thus consolidated these coporations would be dangerous to the liberties of the State. But, sir, take all the railroad corporations that could have been consolidated in this State, if this section had not been passed, their aggregate capital stock and bonds, would have amounted to only one hundred and fourteen millions of dollars. But here it is proposed to put into the hands of a single officer of a municipal corporation, a corporation created for the same purpose that railroad corporations are created in one sense, viz. (as to the financial matters of the corporation), the power of expending twenty-four millions of dollars a year, when this Convention is afraid to allow the consolidation of railroad corporations having capital exceeding twenty millions of dollars. If I am right, then the arguments which applied in that case apply with equal force to this. My friend from Onondaga [Mr. Alvord] spoke in favor of that measure with great force, being fearful that the best interests of the State would be injured if such a clause was not adopted. He used this language:

"Now, sir, in this State of New York, while I would open a broad field for enterprise, while I would give every enterprise that deserves it, the benefit of the accumulation of capital necessary for the purpose of carrying commerce throughout the State, I would so guard it that they could not produce that concentration and consolidation of property, which from time to time, as these monopolies should grow up, would put it in their power to take into their own hands the entire destiny of the people of the State."

The gentleman from Schenectady [Mr. Paige] was even more emphatic in his statement upon this subject. After speaking of the amount of capital that might be consolidated if the amendment should not be adopted, namely, $114,000,000, he says:

"The aggregate of the capitals of the New York Central, Hudson River and Harlem Railroad companies, including Buffalo and Erie, controlled by the Central, and the Canandaigua, owned by it, is $44,543,891. Add to this the funded debt of these four companies ($28,621,354), which represents their property, which is their actual capital of these companies, will be $73,175,245. The capital and the funded debt of the Erie railway is

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$41,050,700. Add this sum to the capitals and funded debt of the New York Central and Buffalo and Erie and the Hudson River, and Harlem, and the aggregate is $114,226,945. This statement shows what combinations of railroad capital can be made in the form of consolidation, unless a restriction is imposed upon the power of the Legislature. A consolidation of a capital of $73,175,245, or one of $114,226,045—can any delegate look at this startling exhibit without alarm? Can he feel no apprehension of danger to public liberty and private rights from such mammoth corporations and gigantic capitals, under the exclusive control and direction of one head, one mind, one will? I do not believe it is possible. The power which would be centralized by either of these consolidations, or the power of one board of directors may, in the hands of one man, who controls the board, be irresistible. The people of the State could not cope with it. The Legislature could not stand up against it—its easy virtue would be surrendered upon the first demand, and the question is, whether it is not wise and judicious, and whether precautionary measures should not prevail with this Convention to interpose some restrictions upon legislative power which will deliver us from the malign influence and oppression of such an overgrown money power as that to which I have referred."

If this state of things might arise from allowing the consolidation of railroad companies to the extent of $114,000,000, what may we not expect if we were to deprive the people of the State of New York of all power over municipal corporations, and give them an unlimited power of expenditure which, in the city of New York alone amounts to $24,000,000 annually. How that money would be expended, and what means would be used, if that power was left in the hands of the mayor of the city of New York, I will state on authority. I will not give my own opinion, because I know but little on the subject, but I will read from a speech made by a distinguished democrat in the Cooper Institute on the thirteenth of November last, and there has been no denial of the statements he made from that day to this. If there has been I have never heard of it. He says:

"The only requisite or qualification demanded of an official looking for place is how he can contribute toward the maintenance and continuance of the party, how adroit he may be in manipulating nominating conventions, how many votes he can control, and whether he is true to the party organization. How they are disposed or qualified to serve citizens, and how they will discharge their duties as public servants, is never asked of them. Within the last ninety days the employees of two departments of the city government had taken from them the whole of two months' salaries for an unknown and unexplained object. Should this glaring wrong be doubted I am prepared to name the departments that have made these exactions upon their subordinates."

Two months' wages of the employees of two departments under the control of the local government, taken just previous to our last election! And for what purpose? Now, sir, put the whole of the expenditures of the city under the control of one man, and allow similar exactions to be made by those holding office under him, and you will perceive what a vast sum may be raised at each election and placed at the disposal of a single individual to influence the result. But, sir, I will quote again from this speech, and I will add that I have not had any denial of this statement. I read from the speech as it was published in the press, and as delivered before a public assembly, and if it was not true, those who were charged, I think, should have indignantly repelled the slander.

Mr. SCHUMAKER—Will the gentleman inform me if he reads from the speech of Fernando Wood?

Mr. HUTCHINS—I do. His language was as follows:

"What I say here now, I say upon my own personal responsibility, and I am personally responsible to any man who may feel aggrieved at what I say. I charge that at the late election the Tammany Hall organization imported thieves from Philadelphia to vote their ticket; that these thieves were organized in different wards of the city, and that bands of them voted in more than sixteen wards and in more than one hundred and twenty-five electoral districts. [Cheers]. More than that, it is known that several of the inspectors of election, after receiving the ballot from the voter, substituted another ballot and deposited it in the box."

Two years ago a law was passed by the Legislature authorizing the Governor of the State to appoint a referee to take the examination of witnesses in all cases in the city of New York, or elsewhere, where charges were made for malfeasance, or misdemeanor in office against city officials. Shortly after that law was passed charges were made against one of the officials of the city of New York, the head of a department. I hold in my hand a copy of the charges. I am not going to read them. They are a part of the public records of the State. They are sworn to by responsible parties. He was an official appointed by the mayor, and confirmed by the board of aldermen, and it was in the power of the mayor of the city of New York, to have removed him from office. These charges were presented to the Governor, and notice was given that an examination would be had of the witnesses, merely to take testimony and report to the Governor. Now, Mr. Chairman, this referee had no other duty to perform but to take the testimony; he had no other power in the premises. All that he had to do was to take the testimony, every thing offered on the examination, and transmit it to the Governor. Notice was served upon the gentleman against whom the charges were made, and he was asked to attend the examination of witnesses. What did he do? He refused to do so, and gave as his reasons for refusing to attend, that the referee was so prejudiced against him that he could not get justice done him, and therefore he would not attend. But what did he do? He resigned. He quit the field. He gave up his position, when the referee had no other power and could perform no other duty than that of simply writing down testimony. If he had been entirely innocent of the charges, it seems to me

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he never would have taken that course. Was it not his duty as an honest officer, to have stood solid as the rock of ages, and met the charges? And, sir, these charges would have rebounded as harmlessly as the gentle rippling of the wave against the solid rock, had his official action been as pure and as free from taint as it should have been, and as I fain would believe it to have been. What was the nature of these charges? And here I wish in a few words to give a little insight into the mode in which it is alleged the people of the city of New York are deprived of their hard earnings by taxation. It is not, Mr. Chairman, through moneys expended by commissions. I defy gentlemen here to name one solitary instance in which one cent has been taken from the public treasury wrongfully or unjustly by any one of the commissions in the city of New York existing under State control. No, sir. No charge of that kind is made. It is admitted on all sides that the administration of these commissions is honest and well conducted. The trouble is, as has been well said, not that they neglect their duty; not that they steal; not that they have defrauded the citizens of any of their rights. It is because they execute the laws too rigidly, that they perform their duty with too great integrity; that they have, in other words, too much at heart the best interests of the people of the city. What was the first charge that was made in this list of charges that I hold in my hand? Here allow me to say that I have always held in high esteem the gentleman against whom the charges were made. He is a clever man, a genial companion and I prefer now to believe that his resignation was caused by some other reason than that he did not dare to have the charges investigated. I prefer to give that interpretation so far as I can individually; but I am bound to give you a specimen of the charges (and when you have heard one you will have a specimen of all) to show you how these alleged wrongs were perpetrated if the allegations of the complaint are true. They are sworn to, and as they are matters of measurement, of mathematical calculation, if there is any error it is very easy to correct it. The Citizens' Association of New York, a volunteer society, composed of citizens of the city of New York being tax payers and voters, presented the charges. The first charge was that in working a road in the city of New York some fifty-two thousand cubic yards of earth filling had been placed upon Eighth avenue, and a warrant was drawn by the comptroller, and countersigned by the mayor, for some $44,000, and given to the official as the price of the work that was alleged to be done. The charge here is that upon measurement it was ascertained that in place of that amount of filling less than half the amount was in reality made; and instead of the work being worth under the contract something like $40,000 it was only worth the sum of $21,000, leaving a net profit of fifty per cent on the amount paid out of the city treasury to somebody if this state of facts is true. And eighteen charges that were filed were all of a similar description. There is no opportunity, so far as the commissions are concerned, for any peculation. All the money that is expended by them is expended for salaries of officers; and the only mode in which there could be any wrong would be to deduct something from the amount of the salaries of the officials, but that salary is fixed by law, and so far as the public treasury is concerned, the public are bound by that law to pay the amount so fixed. But when you come to these departments—take, for instance, the street department—what does it have control of? Your streets, your wharves, your piers, and your public buildings. Now, it is in the working of the streets, it is in the dredging of your slips, in the care of your public buildings, and the supplies that you furnish for your public buildings, that these defalcations take place, if they take place anywhere. Take your Croton aqueduct board. They build your sewers, pave your streets, flag your sidewalks. They expend money for a certain amount of work alleged to have been done. If that work has not been done when it is certified to as having been done, there is where the city may be defrauded But no one of these warrants can be paid unless it is countersigned by the mayor; and to-day the mayor of the city of New York, in the discharge of his duty, holds this important position: that if he chooses he may refuse to sign any warrant; and if he has reason to suppose there is fraud in the contract, that the work is not properly done, it is his duty to refuse to sign the warrant for payment. The charter makes it his duty to have constant care and supervision over all heads of departments and the work performed under them. It is his duty to see that these parties perform it. If he has reason to suppose there is a fraud in any transaction he should refuse the payment of the money therefor by refusing to countersign the warrants, and leave the parties claiming compensation to their remedy in the courts. Now, in relation to the population of cities, I will make this remark here. My friend from Herkimer [Mr. Graves] alleged that there were no more arrests in the city of New York last year than in any other portion of the State in proportion to the population. I would ask the gentleman from Herkimer if he will inform me how many arrests were made in the city of New York last year?

Mr. GRAVES—I am not able to say from memorandums I have here.

Mr. HUTCHINS—If the gentleman is not able to say, how can he make the statement that there were no more arrests in the city of New York last year than in any other portion of the State? Now, as near as I can come to it (I have taken the report of the commissioners of charities, etc., and the report of the police commissioners in the city of New York for my guide), there were about eighty thousand arrests in the city of New York last year—the year 1867. If that was so, sir, there was an arrest of one person in ten of the population in that city during that year. I do not know how many were arrested in Herkimer county last year. Perhaps the gentleman can tell me. But I will venture to say that not one in a hundred of the population of that county were arrested.

Mr. GRAVES—Will the gentleman allow me a question? Were there any more arrests in the city of NewYork last year in proportion to the

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population than there were in the city of Buffalo?

Mr. HUTCHINS—I do not know, sir. I have not ascertained the number of arrests in the city of Buffalo. I am speaking of the city of New York. Again, the gentleman from Richmond county [Mr. E Brooks] informed us that there were about one hundred thousand people in the city of New York living upon charity, in-door and out-door relief and in your public institutions. Look at it. Here is a population, nearly two hundred thousand of whom are committed for crime and supported by charity—nearly one-fourth of the entire population, and that in time of peace. And let me explain one other fact that seems to have been overlooked in this Convention—a state of things peculiar to the city of New York, peculiar to its geographical position, and which must be the same in all time to come. I think I do not exaggerate when I say that there are seventy thousand men doing business in the city of New York daily, whose goods are there, whose stores are there, whose interests are there, but who live elsewhere. They reside in New Jersey, on Staten Island, in Kings county, Queens county and Westchester county, or in Connecticut. They leave the city for the benefit of their families, who desire to live in the country. They can live cheaper there. The means of communication are such (and they are constantly increasing) that they can live fifty miles from the city of New York and do business there. Their whole property is in the city of New York; their interests are in the city of New York; every thing they have at stake depends upon the good goverpment of the city of New York. Ought not that population of seventy thousand to be represented in some way? And how do you propose to have it represented? The city of New York is constantly becoming a city of very rich and very poor people; the poor who are compelled by their poverty to remain there, and the rich, who in consequence of great means are able to sustain the enormous expenses of living. But your middle man, the bone and sinew of the land, the honest tradesman, the clerk, the book-keeper, these men are all driven from the city, and are compelled to reside outside of the city limits. I have one instance in my mind, of one bank in the city of New York, in which are employed eleven clerks, and every one of these clerks resides outside of the city of New York. I have in my mind a hotel in the city of New York where its head waiter, its head porter, and two other employees, men of little means, have within the last eighteen months taken up their residences outside the city of New York. Are not these men to be represented in some way? They are represented by their vote when they vote for members of the Legislature who may have some control over the city of New York, and that is the only way it can be done. If they were permitted to cast their vote in the city of New York, you would, in my opinion, see an entire change of things. You would see there to-day a majority for the party which is now in a minority of some fifty thousand. But the trouble is, as I have said, that owing to the location of that island, the peculiar kind of business carried on, the limited means for the accommodation of the people, that the class of men to which I have referred are compelled to move away, and the city is left, as I have said, to the great mass of ignorant, vicious, depraved population, together with, I will admit, a large number constituting a worthy, honest voting population; and this large element of worthy voting population, includes among its numbers many men of foreign birth. And let me tell my friend from Herkimer [Mr. Graves], when he says that the business men in the city of New York pay no attention to public affairs, he makes an erroneous statement. There is no locality anywhere within the State, where the business men pay more attention to public affairs and strive for good government than they do in the city of New York.

Mr. GRAVES—Will the gentleman allow me to ask him a question? Do the business men in the city of New York attend primary meetings for the selection of officers?

Mr. HUTCHINS—I will answer the gentleman. They do attend primary meetings; and we have as large a number, so far as the union republican party is concerned, in the city of New York, men of wealth and of standing in the community, in proportion to the population who vote that ticket, and who attend primary meetings, as there are in the gentleman's district; and these men gave their time, and their means, and their efforts, as liberally, as unremittingly and as unselfishly during the whole term of the rebellion, as did the loyal men of any other portion of the State; and it is a mistake for the gentleman or any one who thinks with him, to believe that the evils which exist in the city of New York, and which call for the interference of State aid exist in consequence of laxity, want of effort, or want of attention to public matters on the part of men of wealth. I cannot recall to mind a single man in that city, of means and influence, who does not take an active, an open and an earnest part in public affairs. Now, one word as to the expense of commissions which are controlled by State authority. It was asserted by the chairman of the committee that seven-eighths of the expense of the government of the city of New York was occasioned by State commissions. The gentleman from Onondaga [Mr. Alvord] asserted that it was three-fourths. I hold that when gentlemen occupy a position so responsible as those gentlemen do, in uniting in the report we are considering, it was their duty to inform themselves upon this subject, and not have made statements at random. This is a grave question, and it must be decided upon facts, not theories; upon arguments, not clamor; upon truth, not assertion. When that assertion was made, it struck me as a most singular one. It was calculated to produce an impression, or it would not have been made, and therefore the allegation should have been carefully considered before it was made; but it was given as one reason by the chairman of the committee, why he united in the report, and why he proposed to place this large power in the hands of the mayors of cities.

Mr. HARRIS—Will the gentleman from New York indulge me a moment. All I said on that

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subject was this, that a large amount of the expenses—seven-eighths, it has been said—were chargeable to this commission.

Mr. HUTCHINS—This is his precise language; and when he said "seven-eighths, as has been said," he said seven-eighths; and I appeal to every member of this Convention that the impression left upon his mind was that the expenses of those commissions was seven-eighths of the entire annual expenditure of the city government in New York. I hold in my hands a communication from the comptroller of the city of New York to the board of supervisors for the year 1867. It is a small document. The gentleman could have it by simply sending to the comptroller's office for it; and in it will be found every dollar of expenditure by the city authorities of New York for the year 1867, and for all purposes; and he would have found, by examining that document, that so far as seven-eighths of the expenditure being caused by commissions controlled by State authority, that not one-sixth of that expenditure was for such purpose. He would have found that, at the outside, $3,600,000 would have covered that expense, and a little further examination would have brought him to a knowledge of the further fact that one of these commissions, which is included in this expenditure of $3,600,000 (I refer to the police commission), collected for that year and paid into the city treasury the sum of nearly $900,000, where, before, from the same field of operation, the excise commission of the year before collected but $12,000, and the year before that $9,000. In fact, so far as the city treasury is concerned, reducing the amount of expense of these city commissions to the sum of something like $2,700,000 a year. I am not going to detain the Convention by going through this list, but I make the assertion—and, if I am wrong in my statement, I hope some gentleman will point it out—that the expense of the police commissions is something like $2,500,000, the fire commission $780,000, health commission $145,000, Central Park commission $200,000. Put them together, and you have the sum total of the expenditures for commissions where they are controlled by the State authorities. The total city and county expenditure for that year was $24,009,535. The amount raised by taxation was $32,000,000, but added to that is a sum of $2,120,000, drawn from the general fund, to make up the sum total of the amount of expenditure. Here we have a government—a local government—expending something like $21,000,000, deducting there from the amount of State tax. It is done by local authority, by the vote of the people of the city. And still I am gravely told that when there is but $2,500,000 expended by the city commissioners, we have by reason thereof, revolutionized the State, politically; that the people are contented and satisfied with this twenty-one or twenty-two millions expenditure, but that they are terribly dissatisfied with the two and a half millions of expenditures for the commissions, which I aver gives them the best city government, and in fact, pretty much all the good government they have! There is one item in the comptroller's report which recalled to my mind a circumstance which shows how quietly the citizens of New York submit to taxation, and that it is not the amount of money that is expended annually that troubles the people. I find an item of over a million of dollars for lamps and gas. It is for gas furnished the city for lighting street lamps. The city of New York had a contract with the Manhattan Gas company to supply the city for a term of years, I think twenty-five years—at any rate the contract did not expire until about the year 1871. During the war, some three years ago, when coal became high, this Manhattan Gas company, of which I have no doubt you have all heard, as one of the most lucrative and successful companies in the country, which had paid its twenty-five per cent dividends annually, for many years previous to this date, and which had this contract to supply the gas until the year 1871, at the rate of $25 a lamp, yearly—this company, of which I recollect Simeon Draper once remarked when selling its stock, "It pays a dividend every morning before breakfast, and you will wear your boots out running for it," found during the war, when coal became high, and when labor was high, that they could not make quite as much money as they had made, and they applied to the common council for relief. They applied to the board of aldermen and asked to have that contract canceled, and to have a new one made, giving them double the amount, $50 a year for each lamp, for lighting the street lamps. This board of aldermen granted the requested relief. They passed a resolution rescinding the contract. The stock of the company was selling at the time considerably above par, and was paying, I think, five per cent dividends semi-annually. The board of aldermen did it without any consideration, merely for the advantage of the gas company, and not for the good of the public. They canceled the contract, directed the comptroller and the street commissioner to enter into a new one, at double the cost to the city. To the credit of the comptroller and the street commissioner be it said that they refused to make the contract, and it has not been executed to this day. And what has been the result? This company turned around and said to the city "You have canceled the former contract, there is now no contract between us, and we shall hold you responsible for the value of the gas furnished."

Mr. SCHUMAKER—Did not the Legislature of this State authorize the same thing as to the Harlem bridge and canal contracts made before the war?

Mr. HUTCHINS—I am not aware of it.

Mr. SCHUMAKER—They did. You will find the law in the statutes, I think.

Mr. HUTCHINS—I am not aware of any such thing. If they did there were probably good reasons for it.

Mr. SCHUMAKER—Is the gentleman not aware that coal advanced to double the price?

Mr. HUTCHINS—Yes, sir; certainly.

Mr. SCHUMAKER—That was the reason.

Mr. HUTCHINS—I stated the fact that coal had advanced in price, and also that the price of labor had increased; and at the same time I said that the stock was above par, and that they were

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making five per cent semi-annual dividends notwithstanding the increase in price of coal and labor. And that previoualy for years they had been dividing twenty per cent annually among their stockholders, a portion of which was made out of the contract with the city of New York. Having made these large sums all that time, when the time arrived that the city was to be benefited by the contract, and the company losing, then they asked for a rescission of it and obtained it. No new contract having been obtained, what is the result? They have given notice to the authorities of the city that they shall hold them responsible for the value of the gas furnished the city; and one company has already commenced a suit, and have recovered at the rate of fifty dollars a lamp for the value of the gas, and now the authorities of the city are paying this company at the rate of fifty dollars a lamp, although no contract has been entered into. And thus the city has been compelled by the action of its board of aldermen to pay many thousands of dollars annually over and above the contract price by this one operation; and still not a breath of complaint from the tax payers, so far as I am aware. The health commission expends but about $140,000 annually, and yet a portion of our citizens inveigh loudly against this commission, but when a wrong of the description I have referred to is perpetrated they do not utter one word of complaint. What is to be done to remedy the evils complained of? It is proposed by the one report, that of the chairman of the committee, to give the power of appointment to the mayor alone. It is proposed by Mr. Murphy, in his minority report, to give it to the mayor and common council. I have endeavored to show what kind of a common council we have and how far they are to be trusted with power. How is it in relation to the mayor? The gentleman [Mr. Harris] says this is the same power and authority that is exercised to-day by the President of the United States. Now I ask the gentleman where and how the President of the United States exercises a power like this which he proposes to devolve on the mayor of the city of New York for the time being? The time never was when the President of the United States could appoint any official (if I am wrong the gentleman can correct me) without the concurrence of the Senate. It may be that there are some classes of appointments that he can make, but the great majority of them, and, as far as I recollect, all, must be confirmed by the Senate. I believe the gentleman himself took part in the action of the Senate of the United States by which that power has been greatly restricted, viz., to this extent, preventing any removal by the President of any officer whose appointment has been confirmed by the Senate until the consent of the Senate has been obtained for such removal. Now, how, in the light of such a state of facts, can the gentleman say that the same power devolves upon the President of the United States as is devolved upon, or rather proposed to be given to, the mayors of cities? The chairman, in his remarks in support of his report, stated that when the police commission was passed, the rights of the citizens of New York were interfered with, their right of local self-government was for the first time taken away. I would ask the chairman of the Committee on Cities if he will inform me how the police were appointed in the city of New York in 1857, just previous to the time that the police commission was created?

Mr. HARRIS—I am quite sure that my friend has some other motive than information in asking that question. If I understand it, they were appointed by the mayor or mayor and recorder.

Mr. HUTCHINS—I understood him in his remarks to say that they never had been appointed in the way that he proposed to appoint them, but if they were appointed by the mayor at that time (1857), then he proposes to go back and invest the appointing power where it was placed in 1857, when the police commission was formed. So, then, this is not a new thing which he proposes, according to his own statement, but a mode of appointment which has been tried and found to work so badly that my friend from Richmond [Mr. E. Brooks] says that when he was in the Senate he voted for the police commission, because every body in the city of New York demanded and asked for it, and says he presented one petition from his district in favor of it which was signed by over twelve thousand people; that meetings favoring it were held, in which all parties took part; and it was owing to this fact, he says, in conclusion, that he voted for it. Now, the gentleman is not strictly accurate when he says the policemen were appointed by the mayor. The law devolved the duty upon the mayor, the recorder and the city judge. But at that time, Fernando Wood being mayor, the power was thrown into his hands by the other commissioners, and he had practically the sole power of appointment. And what kind of a police did we have? Gentlemen forget the state of things that existed in the city of New York at that time, which called for and terminated in the change that was made—robberies, house-breaking, garroting, rowdyism, Sabbath-breaking, riots at the polls, so that in many districts no decent man would venture near the polls. If I recollect right, the year before this police act was passed some three men were killed at the polls, stabbed—two in one district. It is proposed by some gentlemen to go back to a system we have tried, and which worked so badly that some change was demanded by all citizens, irrespective of party. We may, it is true, have a good mayor, but we want so to frame our Constitution as to protect us if we happen to have a bad man for mayor. The majority report of the Committee on Cities proposes to place the executive power of the city of New York in the hands of a mayor who is to be elected by the voters of the city, and who is to hold his office for three years, is to appoint all heads of departments and officers charged with the administration of departments, all and each of whom may be removed by him at pleasure, and such vast power as was never before vested in the hands of a single man. Was it proposed by legislative enactment to vest such vast and varied powers in the hands of a single individual, the propositon would be truly alarming; but when it is proposed to accomplish it by constitutional enactment, we should pause long and consider well before com-

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mitting ourselves to a course of action which may in its results be disastrous to the last degree. The city of New York possesses many advantages for commerce and manufactures over those of any city of the world, it is true; but still it cannot continue to prosper and grow, deprived of good local government. It is the duty of the State to see to it that it has this government. The State cannot shirk this duty, and it ought not to if it could. Rightly governed, New York city will be the pride of the State and the nation; misgoverned, it will become the fear and terror of both. What is the principal cause of the badness of the New York city government? Is it not attributive to the ignorance, degradation and vicious character of the majority of the voters? Will any attempted reform, therefore, which does not change the composition and character of the constituency be successful? If a spring be muddy, the water which flows from it will be muddy, no matter what arrangement of pipes or hydrants you may make. To meet the difficulty, it is proposed to throw the entire government of the city of New York upon the people who may chance to be for the time beng residents therein—entirely free from all restriction and control on the part of the State at large. If New York city can govern itself free from all control on the part of the State, why not follow out Fernando Wood's idea and make it a free city? Why not apply the rule to the wards and election districts, to the blocks and households, and to the individuals? The fact is, the primal source of power is the people of the commonwealth; the State made the counties, the towns, the cities and the villages, not to abdicate government to them, but for convenience. What municipal powers it gave, it can resume; and if they are not exercised prudently and for the public welfare, they should be resumed. Indeed, that mode of government which secures the greatest safety and protection, at the least cost of personal freedom and convenience, is the best; as for theories, the power to tax is an encroachment on personal freedom and involves the right to confiscate and destroy, that certainly is much more arbitrary and anti-republican than the government of cities by commission. The true political doctrine on this subject, it seems to me, has been well stated in these words: "Leave to the local community what concerns themselves alone, so long, and so long only, as they manage it well; but never leave to local communities what concerns others than themselves, and always reserve the right to resume the power which is abused. If the peace and order of the city of New York concerned only its own inhabitants, that might be a reason why, in framing a Constitution, the people of the whole State should delegate to it the power to preserve peace and order, subject to be resumed on failure to perform the duty; but so long as we have the stranger and sojourner within our gates, so long as we have property of every county of our State, of every State of our Union, and of every nation of the earth within our warehouses, and the ships of every maritime people at our wharves, the preservation of peace and order is a concern of the whole commonwealth, one and indivisible. The duty of preserving peace and order is not, in any constitutional or just sense, a county or city duty—the preservation of the public health does not belong to the city as a city, or to the county as such. As early as the second day of April, 1803, an act was passed by the Legislature to invest the mayor and common council of New York with certain powers in relation to the police and health of said city. The preamble to said act commences as follows: "*Whereas*, the general welfare of the State is connected with the safety and health of New York, which has been visited by destructive and epidemic disease, etc., therefore be it enacted, etc." That is a city office or duty which pertains to the affairs of the corporation called a city, and that is a county office or duty which pertains to the affairs of the *quasi*-corporation called a county. The city of New York is a piece of State territory; every right, privilege and emolument it possesses is the gift of the State—it has no inalienable right to govern itself ill or well, as it pleases, when set up against the people of the State, whose interest in its prosperity and good government is, in numerous instances, greater than that of the inhabitants of the city for the time being. The question is, therefore, properly asked, why is such a radical change proposed for the government of the city of New York at the present time? Does any thing in its past history justify it? Have any petitions been presented for it? Has there been any public call for it? If so, I am not aware of it. All the underwriters doing business in the city have remonstrated against the State surrendering control over the fire commission, as also each of the life insurance companies transacting business in the metropolitan district have presented a memorial praying that the powers and duties of the metropolitan board of health be not transferred from State to local authorities, and a remonstrance signed by many of the leading citizens of New York against the abolition of the police department have been presented to this body. Partisan clamor and prejudice is the only answer given to law, order and good government. One would suppose, hearing the outcry against what is claimed to be the unjust interference of Albany legislation, that government in the city of New York by officers appointed by the Governor or Legislature was of recent invention. A brief statement of the facts will show how erroneous this impression is. The charter to Nichol, the first English Governor who succeeded the Dutch authorities, placed the executive power of the city government in a mayor, five aldermen and a sheriff. Thomas Willett was the first mayor appointed by Nichol. He was a puritan who had left England in search of freedom, and came from Leyden to Plymouth, Massachusetts, whence Nichol brought him to New York and appointed him mayor. The first mayor under the State government of New York was James Duane, appointed by Governor George Clinton, with the concurrence of the council of revision. The mayors of New York continued to receive their appointment from the Governor and council until the Constitution of 1822, when the appointment of mayor was vested in the common council, where it remained until the act of March 3, 1834, vested the election of mayor in the people of the city, and at the first election held in

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pursuance of the said act in April of that year. Cornelius W. Lawrence was elected by a majority of 181 over Gulian C. Verplanck. In 1809 the federalists for the first time in ten years carried the State election, upon which result depended the appointment of mayor. De Witt Clinton was removed and Jacob Radcliff appointed in his stead. It will thus be perceived that for a period of nearly fifty years and during the time that the framers of our first Constitutions, State and national, were active in public life, and are presumed to have correct theories of State and local self-government, the mayors of the city of New York received their appointments from the Executive of the State at Albany, and this without any complaint on the part of the people of the city. What would now be thought of a proposition to have the mayor of the city of New York appointed by the Governor of the State? And still a comparison between the incumbents of the office appointed by the State and city authorities and those elected by the popular vote, would seem to favor and justify a return to the system—appointment system. In the list of State appointments will be found the names of De Witt Clinton, Richard Varick, Marinus Willett (grandson of Thomas Willett, the first mayor under English colonial rule), Cadwallader De Colden, and John Ferguson. Stephen Allen, Walter Bowne, William Paulding and Philip Hone were the chosen officials of the city government, while among those honored with the popular choice appear the names of Aaron Clark, Caleb S. Woodhull, C. G. Gunther and Fernando Wood, the latter having been thrice elected to the office and serving for the term of five years. Furthermore special legislation for the city of New York, under both colonial and State governments has, I might with truth say, been the rule, not the exception. Under the colonial rule from 1691 to 1774, laws were passed upon almost every conceivable subject specially applicable to the city of New York, such as regulating and prescribing the mode for the construction of buildings, wharves, docks, the opening of streets, and keeping the same in repair, compelling the inhabitants of each particular ward to make good its quota of taxes, restraining hawkers and peddlers within the colony from selling without license, and establishing rates to be charged for wharfage of ships and other vessels. Under the State government from 1788, laws of a similar character were from time to time enacted. Laws were also passed known as "compulsory inspection laws." The Governor was authorized and directed by such laws to appoint inspectors for the city of New York, of sole-leather, flax, flour and meal, beef and pork, fish, pot and pearl ashes, lumber, tobacco; in fact, for almost every domestic article of trade and commerce; the seller of the commodity being compelled to pay the fee for such inspection. The Governor was also authorized to appoint in the city of New York gaugers, measurers and weigh-masters, almost an army of appointees, all deriving their power from Albany, and living upon the trade and commerce of the metropolis. In 1835 an act was passed regulating the weighing of merchandise in the city of New York. By the first section it was provided that the Governor should nominate, and, with the consent of the Senate, appoint, a weigher-general and not less than twenty weighers of merchandise in the city of New York, who should hold their offices for two years from the date of their appointment and until others should be appointed in their stead. The weigher-general was to keep an office, to receive orders, to weigh merchandise, which was to be weighed by the weighers authorized to be appointed by the act. They were authorized to demand and receive fees for services for weighing certain specified articles, such as cotton, for twenty-five bales, 10 cents for each bale weighed; if over twenty-five bales, then 8 cents for each; tobacco, 25 cents for each hogshead; hempen yarn, teas, fish, rice, etc. In all some one hundred and fifty articles were mentioned in the act for weighing which a specific fee was authorized to be charged. Section 7 provided that, on all articles not enumerated in the act, the weigher should be entitled to demand and receive the sum of 2 cents for each hundred pounds he might weigh; such fees to be paid one-half by the purchaser, the other half by the seller. It was further provided that no person other than such as should be appointed weighers, in pursuance of the provisions of the act referred to, should weigh any merchandise within the city of New York, for hire, pay or reward, except such merchandise as was intended for the use or consumption of said city. Every violation of the provisions of the act made the offender liable to a penalty of $100 for each offense, to be recovered with the costs of suit by any person who might choose to sue for the same. The weigher-general was authorized to receive for his services and expenses five per cent of all the fees collected. This bill was passed by a vote of 19 to 7 in the Senate, and 78 to 22 in the House of Assembly, the Legislature being democratic by a large majority. William L. Marcy was Governor; John Tracy, Lieutenant-Governor; Azariah C. Flagg, Comptroller, and John A. Dix, Secretary of State. Reference might also be made to the various health laws, laws in relation to pilotage, laws regulating sales by auction, and providing for excise duties on sales of liquor—all applicable to the city of New York alone, and enacted previous to the Constitution of 1846. In the year 1834, an act was passed entitled "An act to provide for supplying the city of New York with pure and wholesome water." Section 1 provided that the Governor should nominate, and, with the consent of the Senate, should appoint, five persons, to be known as the water commissioners of the city of New York, who should be citizens and inhabitants of said city. It was made the duty of the said commissioners to examine and consider all matters relative to supplying the city of New York with a sufficient quantity of pure and wholesome water for the use of its inhabitants. They were authorized to employ engineers, surveyors and such other persons as in their opinion might be necessary to enable them to perform their duties under said act. They were also authorized to adopt such plan as, in their opinion, would be most advantageous for procuring such supply of water, and to make conditional contracts for carrying the same into effect. This law was

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passed by a democratic Legislature and approved by a democratic Governor. Such was the character of the legislation with reference to the city of New York, for a period of about seventy years prior to the adoption of the Constitution of 1846. It will be perceived that during this long period the State not only governed the city of New York, but, it might with truth be said, through the compulsory inspection laws, enacted what its citizens should eat, drink, and wherewithal they should be clothed. I am not able to ascertain that during these many years of almost uninterrupted democratic rule in our State, that anathemas were daily thundered forth against the unjust, tyrannical and outrageous Albany legislation. The city under this legislation prospered in a most unexampled manner. It increased rapidly in wealth and population, and its citizens were contented and happy, relying upon the intelligence and patriotism of the people of the entire State to give them good laws and see that they were efficiently executed. Since the Constitution of 1846 there have been created a board of emigrant commissioners, police commissioners, Central Park commissioners, fire commissioners, health commissioners and harbor commissioners. Applying the rule heretofore stated, can it be said that the people of the State were unwarranted in authorizing these commissions—or, on the contrary, is it not true that the entire people of the State had such interest in the subject-matter of each as to justify State interference, nay, State control? The preamble to the act providing for the appointment of the harbor commissioners, which was passed March 30th, 1855, was in the following language:

"Whereas, it is represented to the Legislature that the harbor of New York has become much obstructed by the erection of piers, wharves and bulkheads, and by other causes, and that grants of rights to occupy land under its waters have been made, and are liable to be made, without sufficient information of the extent of the injury that may be inflicted by such occupation, by narrowing the channel and otherwise."

With the view, therefore, of obtaining the proper information to enable the Legislature to control such erections and prevent such injury, it was enacted that a board of commissioners, to be appointed by the Governor, be created, who should have power and whose duty it was to cause surveys of the harbor of New York city to be made, to ascertain the condition of the harbor, whether the navigation was obstructed and whether, in reference to the probable future commerce of New York, etc., any further extension of piers, wharves or bulkheads into the said harbor ought to be allowed and to what extent; to recommend to the Legislature exterior lines beyond which no permanent obstruction of any kind should be permitted to be made. Also to inquire and report upon the propriety of laying out on the East river a street on the permanent water line in the city of Brooklyn, to be called West street. The said commission were, until the further direction of the Legislature, authorized to restrain and stay all proceedings by virtue of any grant of land under the waters of said harbor theretofore made, and all permanent erections in or obstructions of the said waters, which in their judgment may interfere with or embarrass the establishment of such exterior lines as they should deem proper to recommend to the Legislature. They were further authorized to employ surveyors, agents, workmen and others necessary to the discharge of their duties. In pursuance of the provisions of this act, commissioners were appointed who I believe faithfully and satisfactorily discharged their duties, and without any complaint on the part of the people of the city, although the act, for the time being, took from the local authorities the control of their harbor and vested it in a board appointed by State authority. But why were these commissioners appointed by State authority? It was not that patronage might be placed in the hands of the Executive, or from any disposition on the part of the State authorities to take from the city its chartered or vested rights, or to interfere with its rights of local self-government; but it was because the people of the entire State outside of the city limits had an equal interest in preventing the harbor from being injured with those who chanced to be the inhabitants of the city. If I am wrong in my deductions the honorable member from Richmond (who was at the time the law was enacted a member of the State Senate, and to whose untiring exertions and perseverance we were indebted for its passage) can set me right. In my judgment, the citizens of New York should remember with honor and gratitude this commission, for through its instrumentality, I think, the harbor has been literally preserved from destruction. I would ask my friend from Richmond if he does not hold the same opinion? The acts and doings of this one commission should relieve the system of commissions of much of the obloquy and opprobrium which has of late been cast upon it. Local authority, though it possessed the power, did not, and I do not believe would under any circumstances have initiated the measures called for at the time to protect the port of New York from injury. Hence the appeal for State aid; and, as the State had a vital interest in the matter, the necessary legislation was granted and the harbor saved. As to the Central park, I perhaps could not do better than to cite a short article from the New York *Evening News*, under date Saturday, October 12, 1867:

"We all boast, and justly, of the unrivaled beauty of Central park. It is one of the few public institutions of the city that leaves hardly any thing to be desired in the matter of management. Central park is the greatest ornament of which the metropolis can boast, and all New Yorkers are alike loud in praise of its varied charms of lake and ramble and umbrageous shade and sparkling fountain. But, then, New York has other parks in the very heart of the city, and if as much relative care cannot be bestowed upon them as upon Central park, it might at least be expected that something would be done to preserve them from ruin. Of all these parks, that in Union square is the only one that is kept in even tolerable order; and even Union Square park has become the resort of the most questionable characters. The Battery park no longer deserves the name; the City Hall park is

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abandoned to loafers to such a degree that, according to recent complaints, a respectable woman can scarcely sit there, even in broad day-light, without being subjected to insult. The park in Washington square has long ago ceased to receive much care, the only evidence that the authorities wish to preserve it from the fate of becoming a mere common, being that a decayed looking individual walks his rounds there and politely requests people not to sit upon the grass. Tompkins Square park has long ago been numbered with the things of the past, so far as its use as a park is concerned. The parks in Madison and Stuyvesant squares are kept in tolerable order, as compared with the last mentioned ones, but still the fact stares us in the face that all the city parks are being allowed to fall into decay. The parks of the city, if kept in proper order, would become powerful instruments in promoting the physical and moral health of the people; but if abandoned to decay and allowed to become monopolized by loose and questionable characters, will become as powerful instruments of evil as they might be made of good. There was a rumor afloat last year that the city parks were about to be placed under the management of the Central park commissioners. This would be 'a consummation devoutly to be wished,' but there seems no prospect of it at present. The state of the city parks is a disgrace to the metropolis, and it is time that something were done to effect a change for the better."

This article I am warranted in asserting is but a reflex of the unanimous sentiment of the citizens of New York as to their parks. The police commission was created to take the place of a system which had ceased to protect the citizen from violence and secure his property from depredation. Since the board was established a police force has been organized in the metropolitan district which affords adequate protection to person and property, and reflects the highest degree of credit upon those who have discharged its duties. It is the duty of the sovereign power of the State to provide for the faithful execution of the laws, that every man may at all times find his security in them. The police force is the arm upon which in the centers of population the State must rely to repress crime and to arrest criminals, and the chief function of the police always is the enforcement of the criminal laws of the State. Thus, out of 61,888 arrests made by the New York police in 1863, only 1,414 were for violation of corporation ordinances, nearly all the rest being for violation of State laws. In the year 1865 a joint special committee of the Legislature of the State of Massachusetts addressed the following inquiries to several citizens of the city of New York in relation to the working of the metropolitan police system. The following responses were made:

"NEW YORK, March 28, 1865.

"*Hon. Robert C. Pitman:*

"DEAR SIR: I have been familiar with the organization of the police department for many years and feel much pleasure in answering the two questions you have asked me.

"1. You inquire, 'how far has the system (of a metropolitan police) succeeded in its practical working in your city?' A. The system has worked admirably. Our force is not sufficiently numerous, but organized in a manner to give it great efficiency.

"2. What is the present state of local feeling in regard to it (the metropolitan police), especially among those at first disposed to view it with jealousy, as an innovation? A. I have no doubt that the local feeling is now decidedly and universally in favor of the system. The law creating it was at first considered and questioned as an infringement on our local rights. But such of our citizens as feel an interest in enforcing law and maintaining order are convinced that the present system of police is much superior to any that preceded it.

"Yours truly, JAMES T. BRADY."

"CITY AND COUNTY OF NEW YORK,
DISTRICT ATTORNEY'S OFFICE,
March 23, 1865.

"MY DEAR SIR: In this city the metropolitan police has become entirely popularized, and all local jealousy has subsided. By it all the suburbs of the city are consolidated, practically—harmony and good feeling promoted. As I have been connected with prosecutions here for more than twelve years, my experience is, perhaps, valuable in saying that since the system—while, of course, by aggregation of population, and by the rebellion sending scores of rascals northward from every southern city, and from St. Louis, Cincinnati, Baltimore, and Washington, where martial law irritates them, crime has apparently increased, so has the ratio of its detection.

"Very truly, etc., A. OAKEY HALL."

"NEW YORK, March 22, 1867.

"DEAR SIR: In reply to the first interrogatory, I should say that the practical working of the system has been highly satisfactory. I attribute this, in a great degree, to the fact that it has been removed from all political influence, by the Governor selecting four commissioners, equally from the two great political parties, and to the institution of a most efficient school of instruction. The members of the body are selected with reference to their capacity, mental and physical, and a finer or more efficient body of men acting as a police force I have never seen, either in this country or in any of the large cities of Europe, all of which, with the exception of St. Petersburg, Copenhagen, and Stockholm, I have visited. To their capacity, efficiency, energy and unflinching courage, the city is indebted for its preservation during the riot, and no similar body was probably ever subjected to a severer test than during the three days that preceded the arrival of efficient military aid. To the second question I answer, that, so far as my knowledge extends, it has, entirely.

"Respectfully yours,
"CHARLES P. DALY.

"*Hon. Robert C. Pitman, Chairman, etc.*"

This hardly accords with the statement of the gentleman from Queens [Mr. S. Townsend], that there was no efficient organization or preparatory action on the part of the police at the time of the July riots, in 1863.

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Mr. S. TOWNSEND—In every way the men acted during the riot as well as they possibly could; but I say that there was a want of foresight in relation to the impending riot, when it must have been plain to all but the most obtuse that there was trouble ahead.

Mr. HUTCHINS—With the permission of the Chair, I will ask the gentleman from Queens whether or not any disposition of the police had been made on the Saturday evening preceding the riot, in anticipation of it?

Mr. S. TOWNSEND—I believe that, at the first attack, the head of the police department went on the ground in a carriage.

Mr. HUTCHINS—The head of the police department walked to the scene of the riot, but was brought off the ground in a carriage. When the riot broke out, he hastened to his post of duty; and, as the gentleman from Queens [Mr. S. Townsend] does not seem to know what occurred on that occasion, if gentlemen do not think I am trespassing too long upon their patience, I will read a statement which will give some idea of what did actually take place. Superintendent Kennedy, having perfected, so far as was then deemed necessary, every arrangement for the suppression of the riot, started, about 10 o'clock A. M., on a tour of personal inspection of the districts reported infected.

"Visiting Captain Speight and the Seventh avenue arsenal, and leaving directions for any emergency, he drove across town; noticing a fire at Third avenue and Forty-sixth street, he left his wagon and walked toward it. The superintendent was not in uniform, had no insignia of any kind, and was wholly unarmed. As he passed along Forty-sixth street he observed that every face was radiant with gratification, every person seemed to be highly pleased, no evidences were exhibited of a disposition to riot or to any mischievous conduct, when some one exclaimed, "There's Kennedy!" and in response to a query, "Which is him?" he was pointed out. He took no notice of this, but, on being pushed violently against by a returned soldier, wheeled round and demanded what that was for; received a violent blow in the face from one of the crowd suddenly gathering on him, which knocked him over and down an embankment some six feet high. This was the signal for the cowardly fury of the mob, and down they rushed for him; instantly regaining his feet, he put himself to his speed across lots, toward Forty-seventh street, and had gained on his yelling maniacal pursuers, had reached and ascended the embankment, but foes equally cowardly and brutal met him here; the attack and pursuit had been seen from the opposite embankment, and with cool malignity a crowd awaited his coming; he had just gained the top when a rush was made upon him and a powerful blow sent him headlong back again, at the very feet of his original assailants. He felt throughout that his safety was in keeping his feet, and instantly was he again upon them, but too late for another run for life. The mob, with its Forty-seventh street re-enforcement, closed upon him with yells of exultation, dealing upon him blows with fists and feet. One fellow, armed with a heavy club, made earnest and numerous efforts to dash his brains out, but the sup tendent having a careful eye to them, a quick one to the ruffian's movements, manag keep his head "well in hand," dodge his and all others aimed at that quarter, with wo ful dexterity. During this terrific struggle fifty blows on all parts of his body must been received. In the swaying about of the and its victim, they had moved toward Le ton avenue, and close to a wide mud hole; this a tremendous blow behind the ear sen superintendent headforemost with great viol here it was where his face, buried amid the and stones, received the terrible injuries rendered him unrecognizable. Then arc jubilant cheer, and the mob yelled 'Drown drown him!' But the superintendent p that a plucky, determined man has nine liv well as a cat. Marvelously enough, even n retained his consciousness, was once promptly on his feet, and exhibited a neat strategy and agility. The mud was too dee pond too wide for the villains to enter in o sue through; they were on the Forty-sixth side; the superintendent took in the situati a glance, and made straight across the po Lexington avenue again. This gave hi reaching the other side, an advantageous upon his pursuers, who had to chase aroun borders, and who, on seeing themselves thu generaled, came after him with redoubled and execrations. They were too late, ever."—

Mr. SCHUMAKER—Will the gentleman New York [Mr. Hutchins] inform me what reading.

Mr. HUTCHINS—I am reading from a count of the draft riots in the city of York.

Mr. SCHUMAKER—By whom.

Mr. HUTCHINS—A report made by the d ent officers to the commissioners.

Mr. SCHUMAKER—Are you not reading the police commissioners' report?

Mr. HUTCHINS—I am reading—

Mr. SCHUMAKER—Are you not reading the report of the police commissioners? I that signed by the police commissioners?

The CHAIRMAN—The gentleman from [Mr. Schumaker] will please come to order.

Mr. VERPLANCK—The gentleman from York announced that he was going to prove the riots in New York in 1863 were a part o rebellion, and he is reading a pamphlet w seems to be pretty long. Now, it may be n sary to read "Greeley's American Conflict some other ponderous work in reply (laugh and I do not think this reading is in order.

The CHAIRMAN—The point of order i well taken.

Mr. HUTCHINS—I will not trouble gentl with further reading from this part of the re I have read so far in answer to the statem that have been made that if the police had prepared for the riot and had been early o ground, or if the mayor had gone there wit insignia of office at the beginning, the ri could have been dispersed.

Mr. S. TOWNSEND—Mr. Chairman—

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Mr. HUTCHINS—I will not yield again. Now, to show the malignant spirit of the mob, I will refer to the murder of Colonel O'Brien, as gallant a man as ever lived, a man who had been in the war, a man of your own nationality, Mr. Chairman—one of the glorious Sixty-ninth regiment, a soldier of the Irish brigade. Those men were not beloved, sir, by other portions of their countrymen whose sympathies were on the side of the rebels, but their services to their country will not be forgotten:

"The murder of Colonel H. J. O'Brien by the mob, on the afternoon of Tuesday of riot week, was characterized by appalling barbarities. After the battle between the police, under Inspector Carpenter, in the Second avenue, and after the police had left, Colonel O'Brien, in command of two companies, Eleventh regiment New York volunteers, arrived at Thirty-fourth street and Second avenue. The rioters had re-assembled, a collision ensued, and the military opened fire. The mob dispersed, and Colonel O'Brien, leaving his command, walked up the avenue a short distance, entering a drug store. Returning to the street in a few moments, he was instantly surrounded by a vengeful and relentless crowd which had re-collected, at once knocked down, beaten and mutilated shockingly till insensible. He thus lay for upward of an hour, breathing heavily, and, on any movement, receiving kicks and stones. He was then taken by the heels, dragged around the street, and again left lying in it. For some four hours did he thus lie, subjected to infamous outrages, among them the occasional thrusting of a stick down his throat when gasping for breath. No one who did not seek to feed this brutality upon him was allowed to approach him. One man who sought to give him a drop of water was instantly set upon and barely escaped with his life. While still breathing he was taken into the yard of his own house, near the scene, and there the most revolting atrocities were perpetrated, underneath which the life, that had so tenaciously clung to him, fled. No one could have recognized his remains."

Now sir, in relation to the mode in which colored victims were treated. The animus of the rebellion was exhibited in those riots. Colonel O'Brien was murdered because he was a loyal officer of the Union army. The colored men were so grossly maltreated because they were loyal to the Union.

"William Henry Nichols (colored) resided at No. 147 East Twenty-eighth street. Mrs. Staats, his mother, was visiting him. On Wednesday, July 15th, at three o'clock, the house was attacked by a mob with showers of bricks and stones. In one of the rooms was a woman with a child but three days old. The rioters broke open the door with axes and rushed in. Nichols and his mother fled to the basement; in a few moments the babe referred to was dashed by the rioters from the upper window into the yard and instantly killed. The mob cut the water-pipes above, and the basement was being deluged; ten persons, mostly women and children, were there, and they fled to the yard; in attempting to climb the fence Mrs. Staats fell back from exhaustion; the rioters were instantly upon her; her son sprang to her rescue exclaiming, "save my mother, if you kill me." Two ruffians seized him, each taking hold of an arm, while a third, armed with a crowbar, calling upon them to hold his arms apart, deliberately struck him a savage blow upon the head, felling him like a bullock. He died in the New York hospital two days after."

Mr. Chairman, I am not going to read any more of these accounts of the barbarous outrages committed by that mob. I recur to these scenes merely to show how formidable and dangerous that outbreak was. If we had had at that time in the city of New York, a police under the control of a mayor like Fernando Wood, I tremble when I think what would have been the fate of the city and of the loyal population. Such an occasion may occur again. I hope that in the providence of God it never will; but if it should it is well for us to be prepared; it is well for us to take warning, and, having the light of the past to guide us, to see to it that so far as the city of New York is concerned, by no possibility, in any emergency that may arise, shall there be vested in any individual in that city so dangerous a power. Mr. Chairman, I will here for one moment, refer to the charge of Recorder Hoffman (the present mayor of the city) to the grand jury in New York, December 6, 1864:

"We have, said he, one of the most complete police forces in the world; a force that is approaching as near to perfection as ever can be attained in this city and county of ours. If those officers who are charged with the administration of public justice, and the jurors whose duty it is to examine patiently the cases which will be submitted to them, do their duty, the laws will be enforced to the terror of offenders, and to the protection of the community."

Mr. BERGEN—Will the gentleman allow a question?

Mr. HUTCHINS—I have not time; I wish to conclude my remarks before the recess.

The fire commission and the health commission were alike demanded at the time they were formed, by a united public sentiment, and both in their action, have justified the wisdom of those who originated and secured the passage of the acts calling them into existence. Formerly a fire was the signal of the gathering together of the turbulent, noisy and vicious elements of the city, intent upon thieving and plunder, under the guise of a fireman's hat and coat; while the engine houses were the resort, to a great extent, of young and vicious boys. This has all been changed, a quiet, orderly and effective force has taken its place, so quietly and actively discharging its duties that a fire is extinguished without the knowledge of people in the immediate vicinity. No good citizen, I am sure, would desire the present system to be abolished and a return to the old. The health commission has discharged its functions with courage and vigilance, for which I do not hesitate to say New York and Brooklyn, during the last season and this, were exempt from pestilence. All these commissions at the time of the passage of the act creating them were demanded by an overwhelming public opinion and municipal necessities to reform systems which had become

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so intolerable that they could not longer be endured. It is possible that many republicans have been led to suppose that it was bad political policy to legislate for New York at the State Capitol, as it exasperated the people of the city to roll up large democratic majorities. If the security of person and property was enhanced by such legislation, the republican party would hardly be excusable for allowing such a result to influence them to neglect making suitable provision for our metropolis. But I waive any extended argument on this point, for I am confident that every candid man upon an examination of the subject will perceive that there has been no diminution of the republican vote because of the passage of acts by the Legislature authorizing the establishment of commissions in the city of New York. The republican party at the first State election after its organization, in 1855, cast for its candidate for Secretary of State in the city of New York 6,678 votes, whereas the candidates opposed to the republican party received in the aggregate upward of 60,000 votes, the party at that time receiving about one-ninth of the vote of the city. At the next election, in 1856, Fremont, the republican candidate for President, received 17,771 votes in an aggregate vote of 80,000 in the city of New York. The following year (1857) Clapp, the republican candidate for Secretary of State received 13,415 votes in an aggregate of 60,000 votes polled. In this year the metropolitan police was created, and at the annual election in 1858 the republican vote was 21,622. At the session of the Legislature of 1865 the act was passed creating the board of fire commissioners in the city of New York, and at the next annual election the republican vote was 28,740 in an aggregate vote of 81,000, nearly twice the vote cast for Fremont in 1856, about the same number of votes being polled each year. These two commissions—the police and the fire—have created the special animadversion and ire of those who stoutly resist legislation at Albany affecting municipal interests. A statement of the facts must convince the most skeptical that the cause of the falling off of the republican vote at the elections of 1866 and 1867 in the city of New York and the democratic vote must be accounted for otherwise than by the passage of the acts creating the police and fire commissions. The management of public affairs has been for years the theme of severe criticism. It is always easy to declaim against official corruption, prodigality and misrule, but not so easy to demonstrate in what the enormities consist, or suggest a proper remedy. It should be remarked, however, that the charges of prodigality, improvidence and corruption are well nigh universal on this continent. Local affairs everywhere have been repeatedly criticised and city charters amended, while the evil has been but partially remedied. The great question which we are called upon to decide by the majority report of the committee is this: Would it be safe to fix the forms of municipal government in the fundamental law, thus, under any and all circumstances putting amelioration entirely out of the power of the Legislature? This it is proposed to do by the report we are considering. It would, by the fundamental law, place the mayor at the head of the police, fire commission, charities and corrections, health, and of the heads of all departments and officers charged with the administration of departments, with the power to appoint and remove at his pleasure; this too, for the term of three years. This is a power which has never been granted as yet in this country, and I hope it never will be but if it is to be, I trust it will be by legislative enactment, that if the abuses which I fear may spring therefrom should come to exist, that then the Legislature might grant relief therefrom by a repeal of the obnoxious law. A simple fact of history of recent date should make us cautious how we advance in the steps proposed by the report of the committee. In the winter of 1861, during those dark and troublesome times, before the rebellion had actually come to a head by open attack upon the government, Fernando Wood was mayor of the city of New York. Suppose at that time Mr. Wood had been possessed as mayor of the powers now proposed to be conferred upon the mayor for the time being? Who can tell what might not have been the evils which would have flowed therefrom to our city, State and nation? He would in such case have been at the head of an army of upward of two thousand policemen, besides having the control of all the administrative officers of the city. Possessed of these vast and unlimited powers, it cannot be denied that if he had chosen to have used them in behalf of the rebellion that the great moral and pecuniary support which our city, through its merchant princes, bankers and professional men, and in fact all classes, gave to the government on the outbreak of hostilities, would have been measurably if not wholly neutralized. What Mr. Wood would have done if he had had the power he, under his own signature at that time, told us. On the 24th of January, 1861, Robert Toombs sent to his honor Mayor Wood, from Milledgeville, Georgia, the following telegram:

"Is it true that any arms intended for and consigned to the State of Georgia have been seized by public authority in New York? Your answer is important to us and to New York. Answer at once."

Mr. Wood returned the following reply:

"*Hon. Robert Toombs, Milledgeville, Georgia:*

"In reply to your dispatch I regret to say that arms intended for and consigned to the State of Georgia have been seized by the police of this State, but that the city of New York should be made in no way responsible for the outrage. As mayor, I have no authority over the police. If I had the power, I should summarily punish the author of this illegal and unjustifiable seizure of private property."

Will you tell me in the light of past history whether you think it was fortunate or unfortunate that the police at that time was under the control of State authority instead of the mayor? Adopt the report of the committee, and you put it in the power of a bold, bad man in the future to do great and irremediable injury at a time and in a manner that you least expect. Take warning from the past in your deliberations for the future. The question, it seems to me, is this: is a city government to be framed, from time to time, to

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meet the growing demands and necessities of a rapidly increasing population, or must the people be made to accommodate themselves to the government of visionaries and theorists? When the administration of affairs drifts from the actual necessities of the community and is conformed to theories only, it fails to answer the actual purpose of government. Are we quite sure that we have as yet developed any theory upon which any one form of city government is infallible? We should not overlook the fact that our action is not to affect the State of New York alone. The principles we adopt will in all probability be adopted in other States. It is important to the success of republican principles everywhere that it should not be tied up by any theory whatever, or that there should be any article in its creed except the one that all power comes from the consent of the governed, and that all governments should be carried on through freely and frequently elected representatives. One writer, in giving his views upon this subject, very truly says that it must not be forgotten that the problem of municipal government is not how to secure life, liberty and the pursuit of happiness—for these things every citizen has looked and must always look to the State—but how to secure clean streets, pure water, and a good police at the lowest possible rate. Political questions, properly so called, no more come within the province of municipal government than within that of an insurance or bank corporation. Moreover, we have never acknowledged the right of localities to regulate their own concerns. The State has always reserved the right to interfere with them to almost any extent short of the abolition of local government. In a memorial addressed to this Convention, on the subject of the amendment of this Constitution, signed by a large number of the most influential and deserving citizens of New York, the statement is made that it is not the capitalist, the merchant, the banker, the honest laborer, and the largest tax payer in the city who are opposed to commissions, but the professed politician, the place and power seeker, the trader in contracts and jobs. Some few eminent, able and honest men may question this form of government, but the great mass of our responsible citizens uphold it and would be struck with terror if it were abolished. This statement I believe to be strictly correct. The only really thorough and efficient government, honestly and faithfully administered in the city of New York to-day, is that portion of the governmental function exercised through the agency of commissioners. It should be the desire of every good citizen to see them sustained and protected in the future. On the score of economy alone, I challenge investigation, and assert that it is the most economical government which the city of New York has or can have for the exercise of the functions and duties now devolved by law upon the various commissions in the city of New York. It is not to be denied but that more unity and a more effective administration in the city government is desirable, but how is this to be attained, certainly not in the manner proposed by the committee. If it is attained at all it must be by legislation. I repeat, the subject is entirely within the control of the Legislature. If, as is said, government by commission is anti-republican and unjust to the citizens of New York, then let the Legislature repeal the obnoxious laws and try some other mode of government, but do not so surround the subject with restrictions and limitations in the fundamental law that they can do nothing in the premises. A charter for our city might be framed under the existing constitutional provisions, combining unity, efficiency and economy. All the disjointed parts of the complex machinery of our present city government might be made to work as one harmonious whole. I am not aware that up to this time any charge of official delinquency has ever been made against a member of a commission. For such acts they may, on the petition of a citizen, be cited to appear and answer before a justice of the supreme court of the first judicial district, and for proper cause shown may be by him removed from office. Not only have I never heard of official delinquency charged upon any member of the commission, neither have I ever heard that any member was open to the charge of neglecting the discharge of the duty devolved upon him by law. I am under the impression that the loud complaint made in many instances, is not that the law remains upon the statute book a dead letter, unexecuted, but that it is enforced with too much energy and fearlessness. An article in the Constitution like that reported by the committee, prescribing inflexibly how public affairs in cities must be managed would be almost an unqualified evil. The Constitution of 1846, in my judgment, went too far. There is neither necessity nor justification for such an article. We desire to be governed by the wisdom which is derived from experience. Certainly the manner of the administration of the local city government, executive and administrative, for the last few years, would not justify its adoption. Besides all these considerations, it is geographically out of the question to govern New York by a mere municipal government. Tens of thousands of the persons doing business there, whose withdrawal would leave grass to grow in its streets, and guant poverty to stalk everywhere, live in Richmond, Kings, Queens and Westchester counties, as I have before stated. The appliances of a mere city government would not meet the case. The territory in which these persons reside must, for a variety of governmental purposes, be included with the city. Hence, the necessity of the legislation for the last ten years creating police and health commissions. All efforts to remove the government from the control of the popular will or to secure fidelity by some other expedient than direct accountability to the people, will in the end prove to be failures. If we are to live under republican government, let us have it conducted on republican principles, the most vital of which are the ability of the people to choose competent administrators of affairs, and the necessity of keeping officers responsible to the people by the frequency of elections. When the people understand that their will controls the government, and when they find that their unavoidable mistakes in choice can be speedily rectified at the next election, and when it is understood that errors in legislation can be remedied

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by legislation, in place of waiting twenty years for a constitutional amendment, we may then point to our State government as a specimen of American republicanism. It seems to me, Mr. Chairman, that we are making a vital mistake in assuming the duty pertaining to legislation, not only in reference to the subject now under consideration, but others which have hitherto received a large share of our attention. We should adopt certain organic laws or principles. To go beyond this, and attempt in the fundamental law to legislate for all time to come, may, and probably would, be the source of unmitigated evils to the State. I hope the time may never come when the Empire State, through its representatives in legislative halls will be compelled by reason of hastily considered and unwise restrictions embodied in the fundamental law, to refuse necessary and just relief to any portion of its citizens in any part of the State. But if this should happen, then will the hour have come when its proud standard should be lowered in the dust, and from its bright ensign should be obliterated that word of living light, "Excelsior," and in its place the words, *Perditio tua ex te.*"

Mr. A. R. LAWRENCE—Mr. Chairman—

Mr. SCHUMAKER—I move that the committee now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Schumaker, and it was declared carried.

So the committee rose and the PRESIDENT resumed the chair in Convention.

Mr. CORBETT, from the Committee of the Whole, reported that they had had under consideration the report of the standing Committee on Cities, had made some progress therein; but not having gone through therewith, had directed their chairman to report that fact to the Convention and ask leave to sit again.

The question was put on granting leave, and it was declared carried.

The hour of two o'clock having arrived the Convention took a recess till seven P. M.

EVENING SESSION.

The Convention re-assembled at seven o'clock, and again resolved itself into a Committee of the Whole on the report of the Committee on Cities, Mr. CORBETT, of Onondaga, in the chair.

The CHAIRMAN announced the pending question to be on the motion of Mr. Spencer to strike out the first section, Mr. Abraham R. Lawrence, Jr., of New York, having the floor.

Mr. A. R. LAWRENCE, Jr.—Mr. Chairman, I have hitherto refrained from taking any part in the debates of this Convention, and I have thus refrained for two reasons. In the first place, I was desirous that the proceedings of this body should be facilitated as far as possible, and that no unnecessary debate should be indulged in; and in the second place, it is always much more pleasant for me to listen to others than to engage in discussion myself. But the motion which is now before this committee, made by the gentleman from Steuben [Mr. Spencer], is one that so vitally affects the interests of my constituents—of those who have honored me with a seat in this Convention—that I deem that I should be recreant to my duty if I did not express the views which I entertain on this subject—if I did not lift up my voice against the wrong, which, should the motion prevail, will, in my opinion, be perpetrated upon the city of New York. Sir, I have lived in that city all my life. I was born there. I passed my childhood and my youth there. I was admitted to the practice of my profession there, and my professional life has principally been passed in taking care of and defending the interests of that city. And, Mr. Chairman, I am free to say that I never knew until I heard the speeches which have been made upon this floor how vicious and degraded a place it was in which I lived, nor that the inhabitants of the commercial metropolis of the United States were so utterly ignorant of the principles of republican government as to be unfit and incapable to manage their own affairs. Mr. Chairman, I did not come here for the purpose of instituting any odious comparisons betwen the city of New York and the rural districts. I am quite willing to accord to the rural districts and to the gentlemen who inhabit them, the same honesty of purpose, and the same sincerity of intention that I claim for myself. I am quite willing that they should differ with me, and that their constituents should differ with the constitutents that I represent, upon great governmental and constitutional questions. I do not think that in discussing the questions that come before this committee and which come before this Convention we should be guided by partisan or local prejudices or by political motives or considerations. It is my judgment that we should endeavor to discuss this question and all other questions calmly, sincerely and honestly, and to do that which is best for the interest of the whole State. Sir, I was very much grieved the other day when I heard the remarks of the gentleman from Broome [Mr. Hand]. He seemed to be of the impression that nothing good could come out of Nazareth—that nothing but evil could emanate from the city of New York. Probably at the time he made his remarks he did not recollect that the county which he represents owes its name to an old and respectable merchant of New York city, who for some time was Lieutenant-Governor of this State. My friend from Broome seemed to think that in the city of New York about three men out of five were bent upon the commission of some nefarious crime, and that if he went there his life would not be safe, that as he walked the streets of that city men would be lying in wait for him and ready to pounce upon him and destroy him. Sir, we have been told time and time again upon the floor of this Convention that our free government rests upon the knowledge and education of the people. We have also been told that men are not capable of exercising the right of self-government or of deciding upon political topics who do not understand the subjects which they discuss. It occurred to me when I heard the gentleman from Broome [Mr. Hand] that he, judging him by this standard, was not competent to exercise the right of self-government or to make a Constitution affecting the city of New York because it was apparent to me that he was not familiar with the history of the city of New York, for the past four or five

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years or at any earlier period. It occurred to me that the gentleman from Broome, when he stated that the gentleman from Herkimer [Mr. Graves] was in error in asserting that the average morality of the city of New York was equal to the average morality in the rural districts, did not understand that whereof he spoke. Sir, I wish to meet this question fairly and squarely. I do not hesitate to say and to put myself upon the record as saying that I do believe, as a man who has always lived in the city of New York, and who has had large opportunities of observing the rural districts, that the average morality of the city is equal to that of any portion of the State. But the gentleman said, sir, that we have a large foreign population in the city of New York, and that because of that element we were not capable of exercising the right of self-government. Sir, I claim to know that foreign population as well as he does, or as any man can do, and while I am willing to admit that among the foreign population, as well as among the native population, there are many men of depraved and debased minds, I affirm that the men of all classes in the city of New York, taking them on an average, are quite as honest, and quite as capable, and quite as industrious as the men in any other section of the State. I believe mankind to be about the same whether they are born in a northern or a southern clime. I do not believe that it makes the slightest difference in man's nature—that it makes the slightest difference in his capacity for self-government—whether he lives in a city or whether he lives in the country. And I say that my friend from Broome [Mr. Hand] was indulging in an unnecessary apprehension when he felt that in walking the streets of the city of New York, so large a portion of the population were plotting against his life. And when the gentleman stated that there were not five men in this Convention who believed the assertion made by the gentleman from Herkimer [Mr. Graves] that the average morality of the city was equal to the average morality of the rural districts, I know that he was in error. I certainly wish, sir, to be enrolled among the five men to whom he alluded, and I have no doubt there are four more men in this Convention who would be willing to have their names added to make up that number. Now, sir, in respect to the foreign population of the city of New York, to which allusion has been made, if any argument is to be made in regard to that population, I think it is this—that men who are enterprising enough to leave their native clime, and who have studied enough to become familiar with the nature of our institutions, who are cognizant of the advantages of those institutions, and who have changed their places of residence to avail themselves of those advantages are capable of reflection upon the nature of government, and are sufficiently intelligent to become good and valuable citizens; that such men are capable of self-government and of living up to what my friend from Broome [Mr. Hand] calls the "genius of our institutions." Besides, these men from the old world do not become citizens of the United States at once; they do not obtain the rights and privileges attaching to citizenship until five years after they arrive in this country. They first have an ample opportunity for preparing themselves for citizenship, of becoming familiar with our laws, and of studying the institutions of the country and the principles upon which our government rests. The great principle of government in this State, and the great principle of the government in the United States, is that local communities should, as far as possible, attend to local affairs. You have affirmed and re-affirmed that principle in this committee; you have affirmed and re-affirmed it in this Convention, and you have adopted a report embodying that principle in reference to towns, counties and villages. Now, why make a distinction between the case of cities and that of towns or counties? Is it because the cities have a greater population? It does seem to me that the argument to be deduced from that fact is all in favor of the cities, because the inhabitants of cities have more frequent opportunities for discussing public affairs and more frequent occasions to debate, probe and sift all questions of public interest. Sir, the gentleman from New York [Mr. Hutchins] remarked to-day that he came here to state facts. I propose to do the same. I do not wish to generalize or to philosophize upon this subject. That has been done by older and abler members of the Convention than I am. It has been done by men who belonged to the last Convention, and who know the reasons which guided the gentlemen who framed the Constitution of 1846 in the preparation of that instrument. I will appeal to facts. I will refer to facts to substantiate every position which I may take. Mr. Chairman, when we get up here to discuss this question—the question of the capacity of New York city to govern itself—the first thing we are met with as an argument to show that the people of the city of New York are incapable of self-government is the fact of the existence of the *great metropolitan police*. If you venture to suggest that the police system may be wrong in theory, our opponents say, "here *is* this metropolitan police." If you venture to suggest that the law which organized that police is contrary to the principles of our Constitution, it is said, "here is this great metropolitan police." Sir, if we were to believe all that gentlemen say and all that gentlemen have uttered, there is but one good thing in the southern district of this State, and that is the metropolitan police. Now, sir, I wish to take that bull by the horns. As I said at the outset of my remarks, I have lived all my life in the city of New York, and I think I am quite conversant with the old police system which prevailed there prior to the organization of the metropolitan police system. Sir, I do not hesitate to say that the police system which prevailed under the act passed by the Legislature in 1853, which conferred upon the mayor, recorder and city judge—local authorities, all elected by the people—the right of selecting and appointing the police, was quite as good, quite as efficient and quite as capable as the one which now exists in the metropolitan police district to-day. It is true, Mr. Chairman, that for a year or so after the metropolitan police law had been passed, and after the police had been organized under it, there was some improvement on the old system, but it was an improvement which was to be accounted

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for upon the maxim, "that a new broom always sweeps clean." But, sir, the corrupt influences which had been at work in the old police department have entered into the new system, and any candid man, comparing the two systems, would after reflection determine and decide that the new was no improvement upon the old. My friend from New York [Mr. Hutchins] was troubled with a great bugbear in the person of a gentleman who was mayor of the city at the time the old police system was in operation; and he stated that, although the power of appointing the old police under the act of 1853 was vested in three commissioners, yet the power was substantially exercised by that mayor. I deny it. I do assert that the recorder of the city of New York, who at that time was one of the police commissioners, did exercise the power and the privilege of appointment conferred upon him, regardless of the wishes of the mayor. And I do further assert that when that mayor was a candidate for re-election, the recorder, his fellow police commissioner, took the stump against him and opposed him with all his energy and eloquence. I well remember the recorder's speech at a meeting held in front of the Merchants' Exchange, in 1857, in which he vehemently advocated the election of the candidate opposed to the then present mayor. Mr. Chairman, I maintain that the doctrine which has been asserted in this debate, that because a man who has rendered himself obnoxious to the people of the city of New York has filled the office of mayor, that therefore the fundamental principles of state, municipal and local government should be subverted, and every municipal right and privilege should be trampled upon and abrogated, is unjust, unfair and without palliation or excuse. Sir, in the work in which we are engaged, we are laboring not for this generation alone, but for generations yet to come. The persons to whom the gentleman from New York [Mr. Hutchins] has alluded, and who, in his opinion, have exercised so baneful an influence upon the city of New York, are passing away and soon will have passed away forever. Their influence cannot be felt for more than a few years longer. But the Constitution which we are to frame will, if adopted by the people, remain for many years the fundamental law of the State—certainly for one generation, and perhaps for many generations. Therefore, we should avoid, in considering the provisions of that instrument, the mere passing influences of the hour. Such influences and present prejudices and passions should be forgotten. Now, sir, I have said that, in discussing this question, I should deal with facts. What are the facts? The gentleman from New York [Mr. Hutchins] says there are many thousands of arrests each year in the city of New York made by the police, and that such a fact demonstrates that the city cannot govern itself. All that I can say in regard to that statement is this: that the number of arrests neither show the efficiency of the police nor the inability of the city to govern itself. Arrests may be made, and in my heart I believe that they are frequently made, from malicious and improper motives. The gentleman from New York [Mr. Hutchins] also asserted that in our City Hall park it was almost impossible for a respectable woman to take a seat during the day time, because she was liable to injury and insult. Sir, I pass through that park every day, and I did not know that such a state of things existed; but if such is the fact, it merely shows that the great metropolitan police, which the gentleman has made the text of his discourse, is utterly incompetent to perform its duty, and that it ought to be abolished. If he states the facts correctly they simply show that the metropolitan police have not done and do not do their duty. But, sir, the gentleman from New York [Mr. Hutchins], has referred us to the metropolitan police as an economical institution and it has been asserted, both here and elsewhere, that the economical administration of the police system, when compared with the expenditures of the city government proper furnishes an argument against the ability of the citizens of New York for self-government. I have the facts and figures on this subject and am perfectly willing to meet my friend on this point. The metropolitan police law was passed in the spring of 1857. The district which it created included the city and county of New York, the county of Kings, the county of Westchester, and the county of Richmond, but the figures which I shall present relate solely to the city of New York. In 1857 the expenditures for police in the city of New York were eight hundred and forty-one thousand and one hundred dollars ($841,100). In 1858, when the metropolitan police had been in existence one year, the expenses were nine hundred and eight thousand two hundred and ninety-eight dollars and sixty cents. In 1859, one year later, they had risen to one million, two hundred and twenty-nine thousand eight hundred and sixty-five dollars ($1,229,865). In 1860 they had risen still farther to one million, three hundred and fifty-nine thousand six hundred and twenty-five dollars ($1,359,625). In 1861 they had risen to one million six hundred and fifty thousand five hundred dollars ($1,650,500). I wish to say here that it will not do for gentlemen upon this floor to assert that the increase of expenditures was caused by the war, for the war at that time had not taken place. The fact is, that between the year 1857 and the year 1861, there had been an increase of eight hundred and nine thousand dollars ($809,000) in the expenditures for the maintenance of the police of the city of New York. And yet there are gentlemen in this body who have the audacity and hardihood to tell us that the people of the city of New York are incapable of governing themselves, and who triumphantly point to the economical administration of the present police system as evidence of the truth of their assertion. Sir, the assertion is false in fact, as the statistics show which I have just submitted to the committee. But let us, Mr. Chairman, pursue this subject of the police a little farther; let us go on from the year 1862. When we do so we find the same increase in the expenditures for the police department. In 1862 the expenses of that department in New York city had risen to one million, seven hundred and thirty-eight thousand, seven hundred and twelve dollars ($1,738,712); in 1863

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they had risen to one million seven hundred and forty-eight thousand three hundred and twenty dollars ($1,748,320); in 1864 they had risen to two million sixty-eight thousand four hundred and twenty dollars and sixty-seven cents ($2,068,420.67); in 1865 to two million two hundred and fourteen thousand five hundred and fifty-six dollars and fifty-six cents ($2,214,556.56); in 1866 to two million one hundred and seventy-three thousand seven hundred and eighty-four dollars and seventy cents ($2,173,784.70); in 1867 to two million six hundred and eight thousand five hundred and fifty-four dollars and ninety-nine cents ($2,608,554.99), being an aggregate increase of one million eight hundred thousand dollars ($1,800,000) in the space of ten years. Now, in the face of these facts, gentlemen come to the Convention and say that a commission is the panacea for all the evils under which the city of New York has suffered, and under which all the cities of the State are suffering. That the great remedy, which experience has shown to be effective, is a remedy which involves an increased expenditure of nearly two million dollars, in the space of ten years, in a single department of the government. If my friend from New York [Mr. Hutchins]—I call him my friend from New York, although he does not represent the city, but simply because he resides there, and was elected as a delegate at large to this Convention—if, I say, my friend from New York is satisfied with these figures, I as a representative of the fourth senatorial district, elected by the votes of the people of that district, do not admire them. My constituents, who are for the most part hard working and laboring men, do not like them. Now, sir, although the gentleman [Mr. Hutchins] undertook to explain away the great vote in the city of New York against his party, against the party of commissions, I do not think that he was particularly happy or felicitous in the explanation which he gave, or in the result to which his reasoning caused him to arrive. Sir, what is the truth about that vote? It is simply this: In 1856, one year before the metropolitan police law was passed and went into effect, the vote for the democratic candidate for President was 41,913; the vote for the two opposition candidates, Fillmore and Fremont, was 37,693, giving a clear majority to the democratic candidate of only 4,220 votes. Since that time the democratic majority has constantly increased. In the autumn of 1857 the majority for Mr. Tucker, the democratic candidate for Secretary of State, and who is now one of the delegates to this Convention, was 15,560. In 1866 the democratic candidate for Governor at that time, and now mayor of the city, received a majority of upward of 47,000 over his republican competitor, and last fall, ten years after the police law went into operation, our colleague, Homer A. Nelson, the democratic candidate for Secretary of State, received a majority in the city of fifty-nine thousand six hundred and sixty-six (59,666). Sir, these figures are significant. They mean something. What do they mean? For one, I believe that they mean this, that the people of the city of New York look upon the metropolitan police system as a system of taxation without representation. They look upon it as the old evil against which their ancestors fought years and years ago, and they are determined to continue to fight against this evil by public discussion through the press, and by all legitimate means, until their chartered rights have ceased to be invaded, and their privileges as a municipality are secured. And here, sir, I must be permitted to congratulate the gentleman from Herkimer [Mr. Graves] upon the speech which he delivered the other day, in defense of the report of the majority of the Committee on Cities. I had never known that gentleman until it was my pleasure to meet him upon this floor; but when I listened to the speech to which I have referred, I felt assured that he had been reared under Michael Hoffman, that in his early youth he had imbibed the principles which that statesman had made the leading features of his political career; and I also felt pleased to see that my worthy friend could not forget in his maturer years the teachings and doctrines impressed upon his mind in his early life. Now, Mr. Chairman, ever since this Convention assembled we have been flooded with petitions and communications from the city of New York—petitions and communications which it has been pretended represented the wishes, the sentiments and the wants of the inhabitants of that city. Among these pretentious documents and communications which we have had presented to us, and which are intended to show that the people of the city of New York are not capable of self-government, are those from the so-called "Citizens' Association." I will not stop to inquire who compose this so-called "Citizens' Association." For aught I know the association may be composed of gentlemen of the highest respectability. But you will recollect that in the law we have a term by which we designate the fact that a name is incorrectly applied—I allude to the term "misnomer." So far as I can see from the elections which have taken place in the city of New York, the term "Citizens' Association" is a misnomer, when applied to our petitioners. That association have never had the courage to place a single candidate in the field for a general office, distinctively as the candidate of the association and run him as their candidate alone. They certainly are not a Citizens' Association because they do not represent the citizens of New York. I do not quarrel with them. They may be earnest workers in the path of duty, and earnest seekers for the truth; but I do say that when they come before this Convention and give out that they are *the* Citizens' Association, their name imports more than the facts will warrant. Now, in regard to this association, we have been told in one of their communications, in substance that the danger in the city of New York is from the too unrestricted use of the ballot-box! Here, Mr. Chairman is the whole trouble in this case. It is the old conflict between aristocracy and democracy. A conflict which engaged the generation gone by. The aristocrat has always contended that there is danger to the republic from a too unrestricted use to the ballot-box. My friend from New York [Mr. Hutchins] read to the Convention to-day an article from what he called

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a democratic newspaper. I do not know what the paper was, but, of course, it must have been a democratic newspaper, since he has said so. I propose to imitate his example, and, as appropriate in reference to this Citizens' Association, to read to you an article from a republican newspaper published in the city of New York called the *Evening Post*. A newspaper which demands and receives my hearty thanks for the able manner in which it has always contended for the right of the city of New York to govern itself and to administer and control its own affairs.

"The Citizens' Association have sent to the Convention a long plea for commissions, and against what they call the 'unrestricted use of the ballot-box,' which, they say, amongst other things, 'will pave the way to anarchy.' It is not quite fair to try to frighten the Convention by threats of anarchy, nor is it ingenuous to offer as a reason why the city is 'unfit to govern itself,' that 'this city is the grand entrepot into which Europe continually pours her thousands of depraved and criminal classes—they are here to-day the useful tools of worthless politicians who stop at nothing that will secure power.' The fact is that every man who comes here from abroad must live here at least five years before he can become a 'useful tool' of any kind of politicians, for he cannot vote until he is naturalized. And when we are told that 'the thousands and tens of thousands that came forth from the lanes, alleys, cellars and slums, and from dark holes and corners, in July, 1863, not only still exist, but have largely increased their numbers,' it is proper to ask who owns the 'cellars, slums, dark holes and corners' out of which these wretches crept? who makes twenty per cent per annum by renting vile fever nests, slums, cellars, and dark holes to the poor? When the rich and comfortable people of New York show some regard for the lives of the poor; when 'respectable' men and women cease to live in style on the rental of vile, dark poisonous tenement houses; when public opinion here makes it more disgraceful to own a pig-sty and rent it out for the accommodation of human beings, than to live in one; when there arises some sort of Christian sympathy between man and man here, then it may be time to blame the poor, the wretched, the criminal, for what they are. 'Let there be an intermingling of the powers of State and local government, as there is of State and local interests,' says the Citizens' Association. By all means; but not a muddle; not a doing by the State of what the city only can do well for itself. We are not afraid of the 'unrestricted use of the ballot-box,' because it is always to the interest and advantage of the people to have pure, just, economical government. They may make mistakes, but they will quickly correct them, for they feel the injurious effects of them. It is only when government is removed far away from those who are governed, that reforms become difficult, and people become careless of the general interest and hostile to the laws. We assert once more that the people have a right to govern; they have a right to misgovern if they choose; and no part of them has the right to step in with pretensions to finer morality or greater wisdom, and claim the right to govern the mass. Let the people misgovern; only keep the government near them; concentrate responsibility in the executive head, so that those who suffer may plainly see him whose inefficiency or corruption causes their suffering; separate distinctly the legislative from the executive; and give frequent elections, and the cure for all evils possible to government is certain and speedy. For thus, and thus only, the people can themselves cure the evils and punish the vices of their chosen voters; and this the people will surely do, for they are the sufferers from ill government."

But, sir, I have said that the facts do not bear gentlemen out in their assertions that the people of the city of New York are incapable of self-government, and in discussing that question I have referred to the metropolitan police. Now, conceding, sir, for the sake of argument, that all that is claimed for the metropolitan police is true, and that all that I have said in regard to it is not true, that fact does not affect the soundness of the conclusion which I have reached. Mr. Chairman, we have in the city of New York a bright and shining example of what the people of that city can do for themselves when permitted to manage their own affairs. We happen to have in the city of New York a system of public education which is superior to any similar system in the United States, and as nearly as can be ascertained, superior to any in the world. The Rev. Dr. Fraser, the commissioner appointed by the House of Commons, a year or so ago, to examine into our free school system, reported that, in all its essential features, it was the best in the world. I would ask these gentlemen who make a discrimination against the city of New York in the matter of local government, by whom is this splendid school system administered? Who have brought it to the perfection which it has attained? Is it administered by a commission appointed by the Governor, by and with the consent of the Senate, or elected by the two houses of the Legislature on joint ballot? Not at all. It is administered by a board of education, by local or ward school trustees and by inspectors. And how are these officers appointed? The board of education consists of twenty-one members. The city is divided into seven school-districts. Each of these school-districts has three commissioners, making twenty-one in all, constituting the board of education for the city and county of New York. All of these commissioners are elected by the people, by the people who, according to the Citizens' Association, are unworthy of an "unrestricted use" of the ballot-box—by the voters of New York, whom the gentleman from New York [Mr. Hutchins] has called to-day the "degraded voting population." These same voters also select the school trustees in the various wards of the city. The trustees exercise the immediate and, if I may so speak, the local control over the schools, while the board of education, as the central body, supervises and controls the whole system of free public education in the city. The remaining officers, the inspectors of common schools, are appointed by the mayor, who is himself elected by the people. The people elect the commissioners and school trustees in the same manner as they

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elect an alderman or a councilman, or a member of the Senate or Assembly. The same voters who elected the members of this Convention, Mr. Chairman, elect the school officers in the various wards and the commissioners of the various school-districts. Now, the point which I make in regard to this matter, the argument which I deduce from these facts, is this: that a people who are capable of electing school officers, competent to perfect such a school system—officers who have brought that system to its present symmetry and beauty—cannot be accused of being incompetent to govern themselves or to select any and all the public servants that they may require. The board of education of the city of New York at present expends a little more than the commissioners of the metropolitan police expend in the city of New York. Last year their expenses were greater, but they then expended about six hundred thousand dollars in procuring sites for school-houses. These school-houses belong to the city of New York. The title to the land on which they stand is vested in the city. And while I am on this point it is proper that I should state that the board of education, and the trustees of the various wards have under their control real estate amounting in value to several millions of dollars. Now, Mr. Chairman, this property is not lost to the city. As long as it is needed for educational purposes it is used for those purposes, and when not needed for the purposes of education it reverts to the city and it may be sold by the city and the proceeds arising from such sale deposited in the city treasury. These proceeds can be put in the general fund and used for the payment of the expenses of the city government. Now, Mr. Chairman, my friend from New York said that he should deal in facts. Are not the facts which I have presented plain and palpable? Do they not afford an argument stronger than any which mere language can present? Sir, they do, and it is an argument which no man can gainsay or refute. This school system of the city of New York was last winter subjected to the scrutiny of a committee of the Legislature. Certain gentlemen who sympathized with my friend [Mr. Hutchins] in his admiration of commissions, and whose thirst for official position was far greater than his, proposed to break up this school system and place it under the control of a board of commissioners appointed by the Governor and Senate. Well, last winter they came to the Legislature with their bill, and it was referred to the committee on colleges, in the Assembly. On that committee were the gentleman from Wayne [Mr. Archer] and the gentleman from Cortland [Mr. Ballard]. The board of education, after an argument before the committee, proposed that the committee should go down to New York and examine the schools themselves, and my friends from Wayne and Cortland, and other members of the committee, resolved to act upon the proposition. They did so; they investigated our system in its length and breadth, and after several days spent in the investigation they became satisfied that any intermeddling with the school system of the city of New York would result in injury and disaster not only to the city, but to the educational interests of the State. They determined that they would not destroy one of the noblest institutions in the State merely for the purpose of creating a commission, composed of men whose sole recommendation would be their partisan and political service. Gentlemen cannot get away with this fact, that if our people are competent to manage and control such a delicate and complete system as the system of public instruction, and are competent to select officers who are able to bring it to the perfection which it has attained, and to disburse honestly and faithfully the vast amounts of money requisite for purposes of education in the city, they are worthy to be intrusted with the election of their mayor, their aldermen, their councilmen and all their local officers. Let us now, sir, go a little further with this educational business. The history of common schools in this State furnishes us of the city of New York with another argument in reply to my friend from Broome [Mr. Hand], and also in reply to my friend from New York [Mr. Hutchins]. My friend from Broome, the other day, seemed to think that he and those who resided in the rural counties of this State stood upon a moral platform so exalted that we benighted citizens of New York might admire from the distance, but could neither approach nor attain. Now, sir, we are all in favor of free education. I heard here, on my return to this Convention last week, many speeches in favor of free education and the general educational system of the State, and no sane man can deny the blessings which have been derived from it. In 1849, three years after the adoption of the Constitution of 1846, a law was passed providing for free education in this State. That law, I am frank to say, having been submitted to the people, was ratified by a very large majority in all the counties of this State. I will also do justice to my friend from Broome, and will admit that his county gave a majority of 1,030 in favor of the new law. But, sir, I must also be permitted to say, in justice to my own city, that the city of New York gave a majority of 19,739 in its favor. The law went into operation, but it seems that there were some objections to it. Some people, I believe, did not like its details, and some others did not like the system of taxation which it engendered, nor the burdens which had to be borne in order to carry its provisions into effect. Therefore, the question was presented at the State election in 1850, whether the law of 1849 should be repealed? Sir, I wish gentlemen who have been so very active here in getting up slanders in regard to my native city and the various other cities of the State, to mark well the vote which was cast in 1850 in reference to this question, and to observe who were in favor of free education—who were in favor of the enlightenment of the people. Why, sir, the majority against the repeal of that law in the entire State was twenty-five thousand. How was it in the county of Broome? That enlightened county gave a majority of eleven hundred and seventy-five in favor of the repeal of the law of 1849. How stood the vote in the county of Albany, in which we are to-night, and which contains the capital of the State? The county of Albany gave a majority of five thousand two hundred and seventy-two against the repeal.

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and so, all through the whole list of the counties you will find that it was the cities of the State which stepped in and prevented the subversion of our educational system. Let us look at this for a moment. In the county of Columbia, which contains the city of Hudson, there was a majority of one thousand eight hundred and twenty-eight cast against repeal; in the county of Dutchess, containing the city of Poughkeepsie, there was a majority of three thousand nine hundred and twenty-three against repeal; in the county of Erie, containing the city of Buffalo, there was a majority of one thousand seven hundred and forty-three against repeal. In the county of Onondaga, which contains the city of Syracuse, there was a majority of one thousand nine hundred and twenty-six against repeal. In the county of Kinga, which contains the city of Brooklyn, there was a majority of ten thousand and seventy-six against repeal; and in the city and county of New York there was a majority of thirty-seven thousand eight hundred and twenty-seven against the repeal. Sir, I do not come here to create bad feeling, or to reflect upon any section of this State. I look upon every gentleman upon this floor as my equal, and upon his constituents as the equals of my constituents. But, sir, I never shall submit to sit here in silence and have a badge of indignity or humiliation placed upon me because I hail from a city. I never will allow that those constituents whom I represent upon this floor are not, in every respect, the equals of every constituency which is represented here; aye, even of the constituents of my moral friend from Broome, Sir, I contend that the facts and figures which I have presented tell their own story. They show that those hard working sons of toil who compose the masses in the city of New York and the other cities in this State, when a question of importance is presented to them, know how to vote upon it intelligently and understandingly. These facts and figures show that the people in the cities do vote upon such a question quite as intelligently and quite as understandingly as those who reside in any section of this State. I claim no more for my constituents, and shall be satisfied with no less. As I said when I commenced my remarks, I have hitherto refrained from taking part in the debates of this Convention. All through last summer I was tempted to do so because day after day I heard the same slander, in one shape and another, uttered against the city of New York particularly, and in a measure against all the other cities. To-day we have been treated to the same style of eloquence by the gentleman from New York. Sir, it seems to be impossible for gentlemen on the other side of this question to make a speech here, without doing two things. First, they must indulge in a tirade against the people of the city of New York, and secondly, they must sing loud the praises of the metropolitan police. I do not propose for the present to pay attention to the abuse of the city, but will recur for a while to the police system, for the purpose of alluding to some matters which I omitted when I first mentioned this topic. To come back, then, to the metropolitan police system, I assert that, however beneficial it may have been when the statute creating it was first passed, it has since been diverted from the purposes for which it was designed. The original design of the police law was, that it should apply to matters of police alone. To what has it been perverted? I will tell you. You in the country have a right to elect your inspectors of election and your canvassers, to conduct and superintend your elections and to count the votes which you cast. We have no such right in the city of New York. You have the right, through the inspectors, to appoint your poll clerks. We have no such right. That right has been conferred, in the city of New York upon this police board, who appoint every inspector, canvasser and poll clerk, who officiate at our elections. Is that within the province of police system? Not at all; and when gentlemen say here, as my friend from Steuben [Mr. Spencer] said, that this police system was not intended as a political machine, I say that, whatever it may have been at the outset, it has been entirely diverted from the purposes for which it was originally designed. Sir, when we go to vote in the great city of New York, we find our poll clerks, our inspectors and our district canvassers, appointed by this body, superintending our elections. Appointed by this commission which is not appointed or controlled by the people of the city; a commission, however, which the people are taxed roundly to support. We also find two or three policemen at the door of each polling place to back up the mandates of the inspectors, these policemen being also appointed by the metropolitan police board. That is not right; the power to make such appointments is clearly not a police power, and I was glad to see the other day that some gentleman in the Legislature was so struck with the impropriety and injustice of this thing that he introduced a bill to take away from this police board the power to appoint inspectors or canvassers. Sir, you have the right in the smallest town or the smallest village in the State, which is denied to the largest and noblest city on this continent. We have in New York city about two hundred and seventy-five election districts, and the board of police commissioners appoint all the canvassers, inspectors and poll clerks required in each of these districts. Furthermore the board has the appointment of all the boards of registration in the city. So that the case may be summed up thus. If you intend to vote you must go in person several days before election before a board of registers appointed by the police commissioners and register your name; after you have done that you hand your ballot on election day to an inspector appointed by the same authority a police poll clerk records the fact that you have voted, and your ballots are canvassed by another officer emanating from the same source. Now, these are not police powers in any true sense of the terms, and a reflecting man can at once see how extensive is the influence which the management of the whole machinery of our elections confers upon this board and how shamefully this power can be abused by designing and unscrupulous men. Again, sir, the city of New York ever since the Dongan charter, which was granted in 1686, has had the right, through its mayor and other corporate authorities,

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to grant certain licenses to which have been attached certain fees. Those fees constituted a part of the revenues of the city, and ever since the year 1812 have been pledged for the payment of the interest on the city debt. They go into what is called the sinking fund. Now, a year or so ago, some of the same gentlemen who are so much struck with the beauty of this metropolitan police, and with the grand and beneficent workings of this system, went up to the Legislature, and had conferred upon the metropolitan police the power to grant all these licenses and to take all these fees, making no provision for the public creditor and no provision for the payment of the interest on the debt, thus striking at once at the faith of the city and breaking down its credit. But it is fair that I should say that this law was resisted by the corporate authorities of the city of New York in the courts at the suggestion of Mayor Hoffman, and the question went to the court of appeals, which tribunal determined that such a thing could not be done even by or in aid of the metropolitan police. The court determined that there was a boundary to the power of the Legislature, a limit, at which they must stop, and said, in substance—"You have reached that boundary—you have attained that limit." Now, sir, in reply to my friend from New York [Mr. Hutchins], who has been so eulogistic of the metropolitan police—of their efficiency and capacity—let me refer to the numerous robberies of United States securities which have taken place in New York within two years past. And, first, let me refer to the case of the robbery of the old gentleman, Mr. Rufus Lord, in Exchange place, who had $1,100,000 in United States securities taken from his office. No policeman has yet been able to find the thief, or, if found, he has not been brought to justice. An investigation was had and every effort was made, according to the newspapers, in order to ferret out the criminal, but he could not be found. I might also refer to the case which occurred but recently, just outside of Wall street, where a porter belonging to one of the banks was stopped by men who jumped out of a sleigh, robbed him of between two and three millions of dollars of checks, securities, drafts, etc., and then jumped into the sleigh and escaped. Of course there was the usual excitement in the newspapers about it. We had the usual large headings in "leaded" type, but the thieves were never caught. About two weeks ago, however, a boy stepped into the office of Superintendent Kennedy and put down an envelope on the desk of the superintendent and then left. Upon opening the envelope, it was found to contain the very securities of which this bank porter had been robbed. That boy had not been caught when I left the city. Now, there was a robbery of two or three millions of securities, committed in broad daylight and within almost jumping distance of Wall street, and yet no member of the police was at hand to prevent it. It is true that the securities could not have been converted by the thieves, but the fact that they were returned is not in the slightest degree to be credited to the police system, and it does seem to me to be a forcible commentary upon the defects of the system that the thieves have escaped unharmed. I undertake to say that, in my recollection, there never was such a glaring robbery perpetrated in the city of New York, which went undiscovered and unpunished either by the police or the criminal authorities. I am indebted to my friend from Kings [Mr. Schumaker] for a further list of some recent robberies in New York, the actors in which have hitherto escaped without detection, and will read it to the Convention.

[Here Mr. L. read a long list of recent robberies.]

These figures tell their own story. It is not necessary for me to argue or comment upon them. Now, my friend from New York to-day dealt very largely in statistics, or what he calls statistics, and in which, I think, he drew largely upon his imagination for his facts. He would have you believe that there were seventy thousand men doing business in the city of New York who resided in the suburbs. I suppose he meant voters, for he said that if these poor men who were compelled to move out of the city of New York were enabled to vote, the party now in the minority would be converted into the majority. But I will take him up just there and ask him, if his argument is good for any thing, how it happens that all the suburbs of the city of New York, both in New Jersey, Westchester and Long Island, give such tremendous democratic majorities? That is the only answer I wish to make to the remarks of my friend on that point. My friend [Mr. Hutchins] also undertook to show that the commissions had not been so expensive to the city of New York as had been asserted, and upon that point I also have the figures. The city and State taxes last year in the tax levy amounted to $21,899,000—call it $22,000,000 in round numbers. We have a State tax amounting to $2,920,149.50. We were taxed for the police $2,608,554.29. We paid to the State for school taxes $455,088.27. I will just state here that in addition to supporting our own school system, we paid to the State last year $455,088.27 for schools, and got back from it $247,441.58. We do the same every year. I suppose that some of that amount was appropriated to the schools in the county of Broome, but not having the figures before me, I cannot state the fact positively. That makes an aggregate of $5,983,792.76. Then, in addition to that, we have the commissioners of charities and corrections, for which was appropriated $1,165,000, and we have various other commissions. The Central Park commission cost $241,095; the market commission in the eighteenth ward, $8,000; the board of health, $99,876,47; the fire department commission cost $78,000—making an aggregate expenditure by commissions of $8,278,031.74.

Mr. DUGANNE—May I ask the gentleman a question?

Mr. A. R. LAWRENCE—Not one word. I did not ask any questions to-day of the gentleman from New York [Mr. Hutchins], and I shall imitate him in refusing to answer questions. Now, sir, the gentleman from New York [Mr. Hutchins] read, in a very sonorous voice, and with a great air of triumph, certain letters of citizens of New York in reference to that metropolitan po-

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lice. Among them was one from the Hon. Charles P. Daly, another from Hon. John T. Hoffman, then recorder of the city and county of New York, and also one from the district attorney, Hon. A. Oakey Hall. Well, the only trouble about my friend's statement was just this: that at the time those letters were written, in 1864, the board of metropolitan police was composed of two democrats and two republicans, under a law which was passed under Governor Seymour's administration, and when the police was a non-partisan organization. The gentleman certainly reckoned very much upon our credulity in supposing that such letters would have any weight with this Convention as showing the character of the police at the present time. I will remind this Convention and the gentleman from New York that shortly after the act of 1864 was passed, the term of office of Mr. McMurray, one of the democratic members of the board of police commissioners, expired, and advantage was taken of that fact to appoint in his place a gentleman, who, although a very respectable citizen, is known certainly as being a very thorough partisan, and the result has been that since the expiration of Mr. McMurray's term the metropolitan police board has been a partisan board. Any thing, therefore, that Recorder Hoffman may have said in commendation of the police, or any thing that Judge Daly or Mr. Hall may have said in its commendation in 1864, is no argument in favor of the organization or discipline of the force at the present time. My friend from New York [Mr. Hutchins], in making his long list of charges against the city of New York and to prove its inability to govern itself, has alluded to certain charges which were preferred against Mr. Cornell, the late street commissioner. He referred, I think, to some work that was done on the Eighth avenue, the substance of the charge being that a larger number of cubic yards of excavation or filling had been charged for than had really been done. There, too, my friend drew upon the credulity of this Convention, for he knew, as I know, that in the city of New York the street commissioner in making out requisitions upon the comptroller to pay contractors has to take the sworn returns of the city surveyor on the work as his guide. The city surveyor is a man who is appointed with reference to his scientific knowledge, and who has sworn to perform the duties of his office faithfully; and when he sends a return to the street department with a statement that so many thousand yards of excavation have been made, or so many thousand yards of filling have been put, that is the guide by which the street commissioner is compelled to act. There must be confidence somewhere. My friend seemed to make a great point in reference to those charges against Mr. Cornell, and he enlarged upon them to a great extent. Sir, those charges, and the proceedings thereon, are a matter of history, and I will refer to them for the purpose of showing this Convention that there are two sides to the story, and that my friend in his ardor has only put the Convention in possession of a portion of the facts. I have some documents which I will take the liberty of reading to the Convention. But let me premise by stating that Mr. Cornell presented a full and square and flat denial to the charges which were made against him—an answer which in any court of justice would have been considered as conclusive, and which was regarded as conclusive among his friends. It is said, however, why did he resign? I will tell my friend why he resigned. Because a gentleman was appointed referee to take the testimony in whom neither Mr. Cornell nor his friends had as much confidence as the gentleman from New York seems to have. But after Mr. Cornell's resignation what did he do? An attempt was made by the Citizens' Association to have Mr. Cornell expelled from the Senate of the State, of which he was then a member. He addressed to the Senate a document which I hold in my hand, and which I will now read.

To The Honorable, the Senate of the State of New York: On the eleventh of October last I observed in the newspapers, a publication containing charges of official misconduct said to have been preferred against me, before his excellency, the Governor of this State, relating to my conduct as street commissioner of the city of New York. I published immediately a card stating that I had not yet received a copy of the charges, remarking "nevertheless I hold it to myself as well as to the responsible office I hold, to notice them so far as to assure the public that I am prepared when called upon to entirely refute every allegation or charge which has been made, or any other which malice can invent or suggest." The next day I was served with a copy of the charges. On the 13th of November following, I submitted to the Governor my answer, which I positively corroborated and verified by several official documents. This answer was a full and detailed refutation of every charge against me, and cannot, I think, be carefully read by any fair man without being considered a perfect vindication of my official proceedings. Such an estimate of it has been repeatedly expressed by intelligent and disinterested gentlemen. A copy of the answer is furnished herewith. The Governor, under a statute passed at the last session, appointed a commissioner to take testimony about the charges. The commissioner designated was a well known lawyer, recognized in local politics by the technical or partisan name of "city reformer," a member of the "association," preferring the charges, and one of their "board of legal advisers," who from his political association might fairly be presumed to entertain unfavorable feelings toward me. As the law under which he was to act has been so construed as to require that every question put must be taken down in writing, with the answer given, without any reference whatever to the established rules of evidence which prevail in all other proceedings, I did not feel that an investigation conducted in such a manner, before an unfavorable officer, would insure me a just method of either proving my innocence or protecting me against virulent assaults, founded on hearsay alone, or public rumor. My counsel, after mature reflection, advised me in view of these circumstances, that the tribunal as thus constituted, was neither fair nor just, and as my official term was about to expire, that I should resign my office—

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thus avoiding a partisan investigation and furnishing me the opportunity for vindication which I now seek. My resignation has been construed by the malicious or unreflecting as an indication of fear to meet the charges, or acknowledgment of inability to disprove them. This imputation does me great injustice. I was quite ready to undergo any ordeal however severe upon any legal or fair testimony, before any impartial tribunal, but was not willing to have the columns of the press filled day after day with attacks upon me, founded upon street rumors, or suspicions emanating from mercenary or political enemies. Adhering to my avowal on the 12th of October, that I court investigation, I beg leave to solicit one from your body, of which I have the honor to be a member. I respectfully entreat the appointment of a committee of the Senate with power to send for persons and papers, and armed with all authority requisite to probe to the utmost all my official conduct. I have entire confidence that my political opponents in the Senate will thus afford me a chance to vindicate my official character, and I rely upon their fairness when they come to judge of my conduct. If after a legal and just investigation thus conducted the Senate conclude I am unworthy a seat as a Senator, much as I would deplore being deprived of the honor and the associations which the position bestows, I will resign them all, consoling myself with the reflection which must sustain me under all circumstances, that I have as a public officer at all times conducted myself with honor and fidelity. I hope that this request may satisfy even the most virulent of those who rejoice in assaults upon both official and personal character, that I am quite prepared for any examination which may be made by upright gentlemen in reference to my public course.

CHARLES S. CORNELL,
Senator Fifth District.

Dated, NEW YORK, Dec. 31, 1866.

That document, if the chairman pleases, was laid before the Senate of the State, and it was referred to a committee consisting of the following gentlemen: Chas. J. Folger, Henry C. Murphy, Jas. Gibson, Richard Crowley and N. B. La Bau. On the 1st of February, 1867 that committee made a report, a few extracts from which I will also read. The committee having recited the fact of the presentation of this memorial by Mr. Cornell, and certain petitions which had been presented by the Citizens' Association of New York, go on to say:

"That shortly after the third day of January, 1867, the said Cornell called on the chairman of the said committee, and desired an early day to be fixed for the commencement of an investigation of the charges referred to in the said memorial, and in the said petitions; that no day was fixed for that purpose, nor could be, for the reason that no one of the signers to the said petitions had appeared before your committee, nor had any one in their behalf, to name to your committee the witnesses in support of the said charges, nor in any way to enter upon the investigation thereof.

"That the said Cornell shortly after this again called upon the chairman of your committee, and again requested a day to be fixed for a meeting of the committee for the commencement of the said investigation.

"That the chairman then waited upon the member of your body from whom had come the said petition first presented to your body and referred to your committee, and sought to learn from him, who represented the signers to the said petition, and was informed that a resident of New York city, whose name was given, and who was understood to be a member and officer of the said Citizens' Association, would soon be at the Capitol, and would probably appear before the committee in reference to the said charges.

"That afterward the said officer, and another officer of the said Citizens' Association did meet with three of your committee, and were asked if they desired to be heard before your committee upon the said charges, and were informed, during the course of the conversation in relation thereto, that your committee would give all the time and attention necessary to the complete hearing and investigation of the said charges, and would go (the whole or some of it) to New York city, if need be, to forward the same.

"That it was then stated to the said members of your committee that the Citizens' Association was not responsible for the said petitions, and was not the prosecutor of the allegations and prayer thereof; and that it was the point of those petitions that the said Cornell, having been formally charged to the Governor with official misconduct, fraudulent abuse of power, malfeasance and malversation in office, as street commissioner of the city of New York, and that he having foiled an investigation into the truth of said charges by resigning said office, had thereby impliedly admitted the truth of said charges, and should therefore be removed from his office of Senator of the State.

"That the said members of your committee could not assent to such a proposition, deeming that to prove guilt or culpability of so high a grade as to be worthy of expulsion from representative office, there must be affirmative evidance, and they informed the said officers of the Citizens' Association of an hour the next day when the committee would be in regular session, and when the matter of those charges could be formally entered upon.

"That the members of your committee understood that the said officers of the Citizens' Association were to consult as to the course they would pursue, and whether the Citizens' Association would undertake to substantiate the charges referred to in the said memorial and in the said petitions.

"That at the said meeting of the committee, the said officers did not appear, owing, as the chairman of the committee afterward learned, to some misunderstanding in the matter.

"That it was then agreed that the said officers would return to New York city, and have there a consultation with other officers and members of the said association, and would soon inform your committee of the determination of the said Citizens' Association in the premises."

* * * * * * *

"It is scarcely necessary that your committee should say that no rule of law, no dictate of

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common sense, no principle of ordinary fairness, will permit that guilt or culpability should be assumed from an act which may be attributed to other motives than a guilty consciousness, and where guilt or culpability should be already and amply proven before action is had thereon, which will make infamous and subject to a degrading and notorious punishment.

"Your committee cannot think that the judgment of the Senate will sustain the position that the resignation by Mr. Cornell of his office of street commissioner is, in legal contemplation, a confession of guilt, or that it will justify or even give color of excuse to the Senate for inflicting upon him the punishment and disgrace, and upon his constituents the inconvenience of his expulsion from his seat.

"It is proper also to say that he has been, to all seeming, at all times since the reference to this committee, ready for the investigation, and has proffered the committee every facility of access to and the use of books and documents relating to the matters likely to be involved in the investigation.

"Your committee, therefore, report the following:

"*Resolved*, That the Standing Committee on Judiciary be, and it is hereby, discharged from the further consideration of the memorial of Charles G. Cornell, and of the petitions asking for his expulsion from his seat as Senator from the fifth senatorial district.

"CHARLES J. FOLGER,
Chairman.
"HENRY C. MURPHY,
"JAMES GIBSON,
"RICHARD CROWLEY,
"N. E. LA BAU."

"Dated February 1, 1867."

The committee were accordingly discharged.

Sir, that is the history of the matter, and it does seem to me that the judgment and decision of that committee and of the Senate should be received as a conclusive answer to the charges which have been made by the gentleman from New York. My friend also dilated at very great length upon a gas contract in the city of New York. Well, sir, when he was speaking of that gas contract his argument was directed, as I understood it, to show that we should not concentrate in the mayors of cities the whole executive powers of cities. It so happens that Mayor Hoffman, the mayor of New York, vetoed the resolutions which were passed by the common council of New York in reference to that gas contract; and how in the face of those facts my friend can perceive that his argument against this section is strengthened I cannot understand. Even the Citizens' Association, in their communication to this body, to which I have been alluding, dated 20th September, 1867 (whether my friend had seen this before he made his speech or not I do not know, but there is a remarkable similarity between the document and the speech), speaking in regard to this very matter say this:

"A resolution passed the common council directing the street commissioner to make a contract for twenty years for lighting our streets with coal gas. Mayor Hoffman vetoed this scheme; but it was only effectually stopped by an injunction."

But my friend alluded to another gas contract, in which he said the court of appeals had made some decision. In relation to that it is sufficient to say that there was a company—not the Manhattan company, but a company called the Harlem Gas company—which had some sort of a verbal contract for a year or two duration with the city of New York for lighting a portion of the upper part of the city with gas, and when the high times came on, the price of coal and fuel and the various materials which are required in production of gas increased, of course, as we all know. The company gave notice to the city that they would require a much higher price per lamp than had been paid theretofore. The city could not go to work and make them furnish their gas for a lower price than it was worth. The contract was out. They did the best they could, and instead of leaving the people all in darkness, they went on and had the streets lighted by the Harlem Gas company. The company sued the city of New York to recover the value of the gas they had furnished at the enhanced price; and the superior court of the city of New York, notwithstanding that the city interposed the objection that a contract involving a sum of more than $250 should be advertised under the charter, decided that that provision of the charter did not apply. They decided in favor of the company, and upon an appeal to the court of appeals the decision was sustained. My friend's argument involves the judiciary in the lower part of this State, and the court of appeals representing the whole of the State, in this fraud, if there was a fraud. I do not think that this Convention will be influenced by any such argument as that in deciding the motion now pending. It is, however, of a piece with many others that we have heard offered during this discussion. There was another gas-light company that had some trouble with the city. There are gentlemen upon this floor who are more accurately acquainted with the facts than I am. It is called the Metropolitan Gas company. Possibly some gentleman may enlighten the Convention on the subject before we are through with this debate. It seems to me, however, that the action of Mayor Hoffman in this case shows that the very best thing we can do is to put into the hands of the mayor the power which it is proposed to give him by the section, as reported by the majority of this committee. Now, I want to show this Convention what, according to the Citizens' Association, the mayor of the city of New York has done. There was a resolution passed, say the Citizens' Association—I do not know any thing in regard to the facts, but we will assume for the argument that their statement is true—in regard to the Harlem Railroad company, giving to the company the whole of One Hundred and Twenty-fifth street.

"It was pushed through with such indecent haste (passing both boards the same day), that Mayor Hoffman, in his veto, if not in form yet in substance, strongly rebuked the common council for the extraordinary rapidity with which it was ready to sacrifice the interests of our people."

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That was veto No. two, and it was vetoed by the city officer in whose hands it is so dangerous to locate this extreme power, according to the gentleman on the other side of the house. These are two of the pet subjects upon which the Citizens' Association and their emissaries and orators and advocates are engaged in writing and talking in the city of New York and throughout the State at large. How they can claim any particular glory or honor from the action of the mayor I do not know, but if they can, let it pass for what it is worth. We claim that if any thing was done to protect the corporation or the tax payers of the city, it was done by the mayor of the city in both cases. There was the matter also, about the Corporation Manual. That is referred to by the Citizens' Association as an evidence of great extravagance on the part of the common council of the city, and also as an evidence that the people of the city are utterly incapable of conducting their own affairs in the city of New York. But it also appears in the communication of the Citizens' Association that the manual business was stopped by the veto of the mayor, and assuming all that they state about the facts to be true, the statement only goes to show that the hands of the mayor should be strengthened in the manner indicated by the section, which we are now asked to strike out from the article under consideration. The Citizens' Association also allude to the leasing of certain rooms from Mr. Fernando Wood. I do not know whether I ought to say any thing about Mr. Wood, because he seems to be the great bug-bear of this Convention. He has been talked about again and again; and if you propose to do any thing in relation to the office of mayor in the way of increasing its power, gentlemen get up and say, "but suppose Fernando Wood should happen to be mayor. It is true, we are engaged here in forming a Constitution which may last twenty or fifty years; but suppose Fernando Wood should happen to be mayor." I do not know whether Mr. Wood is as good or as bad as he is represented by some people to be. But I do know this fact, that my friend [Mr. Hutchins] who addressed the Convention at such length this morning, when in want of an argument hauled out of his pocket a document which emanated from Mr. Fernando Wood, a document which contained one of his stump speeches in the last mayoralty canvass in the city of New York. So it seems, Mr. Wood can be used on either side, for or against a proposition. I do not propose to use him for either side; I will, however, say in reference to that lease that Mayor Hoffman has taken the most efficient measures to prevent any fraud from being perpetrated upon the citizens of New York, if any such was contemplated, and that the whole matter is now before the courts for adjustment. Then what is known as the Ann street job, is alluded to by the Citizens' Association. Who stopped that if it was not the mayor of the city? Was not his action in that matter made a point against him all through the late canvass, in which he was vindicated by the people of the city and re-elected by a larger majority that any other man ever received for the office of mayor. I do not see how an intelligent man can maintain that because Mr. Hoffman acted thus the Citizens' Association are entitled to all the glory, nor how these facts help the argument which is intended to show that the people of New York are incapable of self government. Indeed, the argument is all the other way. My friend from New York [Mr. Hutchins] referred to another thing upon which the changes have been rung in the city of New York ever since I was admitted to the bar, and that is quite a number of years ago. I refer to what is called the Fort Gansevoort job. Now, my friend was discussing matters, as I understood him—permit me to say here in all kindness—rather from a partisan point of view, when he alluded to that transaction. He seemed to be endeavoring to create the impression that the dominant party in New York now, were responsible for that matter. I will refer to the case as reported (23 N. Y. R., p. 318) for the purpose of showing who were interested in the contract and also to show that they were not democratic politicians. I make no charge against the integrity or honesty of any individual who was concerned in it, for I claim to know nothing about that. The case is thus stated in the report. "This action was brought to obtain a judgment of the court declaring void and setting aside a conveyance made by the corporation of the city of New York under the common seal and the signatures of the mayor and the clerk of the common council, of a piece of land to be made, under the waters of the North river, and situated between Gansevoort street and Twelfth street, to the defendant, Joseph B. Varnum, and which he had conveyed to the defendant Coleman. The city was the owner of the adjacent uplands, which gave it and its grantee the right to sink bulkheads and make dry land of that which was under water. Simeon Draper was made a defendant on the allegation that he was influential in procuring the conveyance and was interested in the purchase; and that, being one of the governors of the almshouse, he was prohibited by law from being a party in interest to a purchase of any of the property of the city. The plaintiff averred that he was a resident and tax payer of the city of New York, owning real and personal property situated therein, and paying taxes thereon, and also that as the holder and owner of a portion of the city stock, he was creditor of the city to the amount of more than one hundred dollars ($100,) which debt was payable with annual interest. Now, in relation to this matter, I say this—keeping in mind the fact that my learned friend discussed this question from a partisan and political standpoint—that the gentlemen mentioned in that case were at that time very prominent members of the whig party, and subsequently of the party with which the gentleman is now connected; and if my recollection is not at fault the gentleman who was mayor of the city at the time these proceedings took place in 1852, was also a member of the same political party. Sir, if gentlemen will drag these things into this discussion for heaven's sake let them stick to the record. My friend says that the learned chairman of the Committee on Cities proposes to go back to a system which we have tried and which has been found wanting.

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At the outset of my remarks I took occasion to allude to the former organization of the police. I only refer to it now because it comes in line with many other things which he said, that I jotted down, and also for the purpose of reiterating that which I said before, that the gentlemen who composed for the most part the police board under the old system were quite as competent to select a good police force as those who are now in power. Therefore, I deny that we propose to go back to a system which has been tried and found wanting. We propose to go back to a system which is quite as good as that which now prevails in the city, and confers upon the people of the city of New York the right which every other county of the State has. The gentleman from New York also referred to some remarks that fell from the gentleman from Richmond county [Mr. E. Brooks] the other day, in reference to this metropolitan police law. The gentleman from Richmond was not in his seat when my friend was speaking, but I see that he is now here, and as I know that he is abundantly able to defend himself, I will pass that matter. But, Mr. Chairman, the whole argument of the gentleman from New York was summed up in this sentence. He said that "the trouble in the city of New York sprang from the degradation of the voters." Mr. Chairman, there is the difference between us —the whole trouble in this case. We who are supporting the report of the majority of the committee are fighting upon the floor of this Convention the same battle that has been fought in this country for years. It is a battle between the aristocratic and the democratic element of the country. Gentlemen wish to take us back to the times which prevailed under the old colonial system. My place is with the democracy. I have no sympathy with gentlemen who proclaim the principles that my friend from New York and the Citizens' Association proclaims. I believe in the ability of the people to govern themselves. As I stated awhile ago, in reference to an unrestricted use of the ballot-box. I believe the freer we can make the ballot-box among the people of this State—I mean among the white people of this State [laughter]; I am on record in regard to that—I say among the white people of this State, the more opportunity we shall have for preserving and keeping a good government, and the more likely we shall be to protect and maintain our liberties and our rights. Sir, I have been very much surprised to see gentlemen who so eloquently and ably advocated upon this floor, the right of the negro to vote, get up, and ask that a clause should be inserted in the Constitution providing that an elector shall, as a prerequisite to his right to vote for State Senator, pay a tax on a certain amount of property. And I have also been surprised to see that my friend, the late mayor of New York [Mr. Opdyke]) in his minority report, has presented the same view. That minority report if adopted will impose a burden upon suffrage exceeding any thing which has ever existed under our city charters, whether granted under the colonial government or by the State. The gentleman from New York [Mr. Opdyke] wishes to establish a property qualification much higher than that which prevailed under the Dongan and Montgomerie charters, for voters for the office of alderman in New York. If the city of New York is really suffering from the great evils which have been so eloquently depicted by gentlemen upon this floor, it does seem strange that the people of that city have not become aware of the fact, a fact in which they are more interested than all other sections of the State. Every attempt has been made to instruct them upon this point by gentlemen from the rural districts. They have been flooded with pamphlets. They have heard orations of able and eloquent men like my friend, and the whole machinery of elections has been placed in the hands of their antagonists. Every opportunity has been seized for the purpose of preventing them from voting, in the shape of registry laws, compelling every one to go personally and register his vote, and by obstructing the naturalized citizen in casting his ballot. And yet, year after year the majority in the city of New York keeps rolling up higher and higher. And here let me say that gentlemen are very much in error when they suppose that that immense vote in the city of New York only represents what the gentleman from New York calls "the degradation of the voters." Why, sir, it represents every class of citizens. It represents the wealthiest citizens, the mechanical classes and the laboring classes, who go to the polls, side by side, at every election and record their protest against the system of legislation which has prevailed for the last ten years, and which it is now proposed to incorporate into this Constitution. Sir, you will never lose any thing, the people of this State will never lose any thing, by trusting the people, either in the country or the city. I am perfectly willing to trust the people of the country, and I hope that you, when you look this thing all over, will be perfectly willing to trust the people of the city. My friend referred to several commissions—among others, the harbor commission—to show the blessings of the commission system. Because the harbor commission perhaps did some good work, is that any argument to show that another commission, created by the local authorities, would not have done the same? He referred to the Central Park commission. Of that my friend is, I think, a member, and it does not become me to say any thing in reply. As to the riots that he has spoken of, I have only to say that my reading of history teaches me that there have been riots all over the world, and probably will be to the end of time. I never heard that it was proposed to abolish the city of London because they had riots there under Lord George Gordon, nearly a century ago. Nor has it been proposed to abolish certain counties in this State because there were anti-rent riots there. Men will sometimes lose their reason and go to excess; but because they become temporarily excited and frenzied, and even violate the law, we should not disregard all the principles on which our government rests. A few more words, Mr. Chairman, and I will conclude. We have heard a great deal about taxation in the city of New York. I have here a tabular statement which shows the rate of taxation in the various cities of the State. I do not think the city of New

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York compares very unfavorably with the others. It appears that Rochester is the highest on the list, and that she is taxed six dollars on every one hundred. Oswego is the next—four dollars and eighty cents on every one hundred. Troy, four dollars and forty-seven cents; Syracuse, three dollars and seventy-two cents; Albany, Brooklyn, Schenectady and Poughkeepsie, nearly alike, averaging three dollars and fifty cents; New York and Hudson come the lowest on the list, Hudson being less than New York. One would suppose from the argument we have heard here for weeks and months, and which we heard all this morning, that the city of New York was taxed beyond endurance, yet the statutes show that compared with the other cities of the State, her taxes are moderate. In conclusion, I would remind the committee that the distinguishing feature of the city of New York, ever since it was founded, has been its cosmopolitan character. And I attribute its great increase in wealth, its great increase in population, to the fact that it has always retained its cosmopolitan character. If gentlemen will look at the history of the city of New York in colonial times, they will find the same characteristics on a smaller scale as those which now distinguish it. They will find a large foreign population always there. They will find a population different from that which had control of the other parts of the country. Sir, I contend that the system of municipal government under which the city of New York has increased in greatness, in wealth and prosperity, under which she has risen from a population of one thousand souls in the year 1696, to one million of souls in the year 1868, cannot be very imperfect. And why is it that in the space of the last ten years, for the first time, it has been discovered that this municipal system was all wrong; that the city of New York needed some exterior aid; that this municipal government, under which we have grown and increased in strength, was all a delusion and a snare? It is to be found in the fact that the people of that city do not agree in political sentiments with people in some other parts of the State. That is the solution of the whole problem. Sir, it is better for us to look that fact in the face and remember it, because politics change, and are changing all the while, and the political complexion of the State one year is no guide in determining its complexion the next year. I hope, Mr. Chairman, that nothing will be incorporated into this Constitution for merely political purposes or to secure the triumph of any political party. Such measures always recoil upon their inventors. But I do implore gentlemen to recollect that, as the city of New York is the heart and center of the commerce and of the wealth, not only of this State, but of the nation, that any wound inflicted upon free institutions and upon local government in her person will be felt to the remotest extremities of this State and of this Union.

Mr. BAKER—Before voting upon this question I desire to express to the Convention my views upon the section under consideration. By section 9 of article 8 of the present Constitution, it is provided that "it shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent abuses in assessments, and in contracting debt by such municipal corporations." That, I suppose, means among other things, that the Legislature is to provide what officers shall be vested with the power to govern within these corporations. After having done that the eighteenth section of the sixth article of the Constitution provides—I mean the present Constitution of 1846—that "all judicial officers of cities and villages, and all such judicial officers as may be created therein by law, shall be elected at such times and in such manner as the Legislature of the State may direct," thus vesting the right to elect in the people of the cities and villages, for although the word "people" is not used in the section, yet by fair implication the electors of the cities and villages are intended by the language used, and I believe the Legislature has never ventured during the Constitution of 1846 to put any other construction upon that section, by creating any other body of electors, for these officers than the body of electors at large, within the municipal corporations mentioned in the section; again it is provided in another section (section 2, article 10) of the present Constitution, relating to the mode of appointing the strictly municipal officers of the cities and villages in this State, as follows: "All city, town and village officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the Legislature shall designate for that purpose." Now, hitherto, in construing that section of the Constitution, the Legislature have always deemed the elective power as vested in the electors of the city, town or village, in the electors of the municipal corporation. And the legislative construction put upon this section of the Constitution, always has been that the Legislature had no power, under that section, to provide for the appointment of city, town, or village officers, in any other mode, excepting by election or appointment by some power or body specified and designated by the Legislature in some act, and which power or body must be in such city, town, or village. Now, I take it that there cannot be any question that the Constitutional Convention of 1846 intended to express, and did express, in a direct and positive language, the duty of the Legislature to provide for the election, by the electors of the several municipal corporations of this State, of their city and village officers. And this construction was put upon the Constitution of 1846, by the Legislature prior, up to, and since 1857. But prior to that date, and if my memory serves me correctly, as early as 1855, and upon the election of Mr. Wood as mayor of the city of New York, upon an examination of the statutes then vesting in him and other officers of that city the power of appointing the police of that city, there were a large class of persons, as the gentleman from Richmond [Mr. E. Brooks] has said, of all parties, of all classes of men, of every description, and I think he used

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the language, "every body," demanded that there should be some different mode or way devised of appointing police officers of New York city, from that prescribed by the statute as it then stood. Astute and ingenious lawyers were sent here to Albany, from New York, to devise some means of evading the intent of the Constitution of 1846 by enacting a law not in conflict with the literal import of the words of the Constitution, though in direct conflict with the intent of it, in respect to such municipal officers. One of these lawyers, eminent for his acuteness and astuteness, who frequented the Legislature of 1855, and was interested in this bill, was Mr. A. Oakey Hall. I well remember his approaches and plausible arguments to me and others to overcome our objections to his project. I had conscientious scruples against the mode of evasion proposed by him. I also doubted the policy of his scheme, even if it should prove a successful evasion of the Constitution of 1846, if it was to be accomplished in the manner pointed out and advised by Mr. Hall, and, if my recollection serves me, when the bill came up for the final vote in the Assembly, I voted against it, or did not vote at all. I may, possibly, be mistaken about that, but am quite sure I am not; but I know my convictions, as a lawyer and a legislator, as to putting this construction on this clause of the Constitution, were against Mr. Hall's mode of evading the section of the Constitution of 1846 which I have read. Now, up to this time, nobody had dreamed of a power existing anywhere out of the electors of cities to appoint or elect their municipal officers, the same as every town in the State. And in this report the majority of the Committee on Cities does not propose in any way to vest electors, the body of electors of cities, with any new power not heretofore enjoyed by them under the Constitution of 1846; it is simply a continuation of the power that was contemplated to be vested in them by the Constitution of 1846, and that the majority report vests in them. I do not see any thing new in the proposition of the report of the majority of the committee that is at all novel, experimental or dangerous; it leaves the power of election where it was before. Then, if this section which is proposed to be stricken out vests no new or dangerous power, I am at a loss to see any occasion for the alarm manifested by many delegates on this subject. I am at a loss to see any reason, and I have heard no reason assigned by any gentleman that has preceded me, why that power should be taken away from the electors of the cities and villages. The metropolitan police bill has its history, and it has been alluded to by several gentlemen who have preceded me. It had its origin in the hostility within the district of New York and Brooklyn against Mayor Wood. And that hostility was not confined to the republican party, to the American party, or to the old whig party. I think there was as bitter a hostility existing against Mr. Wood in a large portion of the democratic party within those cities, and in the American party, as there was in the republican party—a feeling as hostile, and as bitter, and more so, than ever existed against Mayor Wood in the republican ranks. The great majority, consisting of republicans in the Legislature of 1857, had but little acquaintance with Mayor Wood. They knew nothing of his personal character or his political career, hardly any thing except what came in the newspapers and by a kind of rumor or gossip from the city. And now I will take occasion to say, in answer to the gentleman from Steuben [Mr. Spencer], upon whose motion we are now speaking, that I never understood the passage of the metropolitan police bill to be a party measure in the republican party. I never understood that it was instigated, devised or introduced as a partisan measure. There were men of all parties who came to this city, and, as lobbyists, argued for and urged the passage of that bill, because, as they alleged, they and the people had no faith in the police appointed by the mayor. And this scheme of evading the clear intent of the Constitution of 1846 was got up by New York lawyers and lobby politicians, and not by the body of republican members, who came from the center and western part of the State, mostly from the rural districts. The scheme was never devised by them, nor at the time deemed a matter of party policy, and when it came to its passage many gave their assent to it but reluctantly. If I gave my consent not to openly oppose it at all, it was against my convictions as to its constitutionality and expediency; and my impression and recollection now is, that I did not vote for it in any stage of its progress. It had its origin among a different class of men, and for a different intent from what has been charged by several gentlemen who have preceded me. But that bill having been passed and subjected to the ordeal of the criticism and judgment of the court of appeals, and having been sustained by that court as not directly contravening the section of the Constitution I have quoted, became the entering wedge of all these numerous commissions which have followed in rapid succession, and of which it was the prototype and pioneer. And upon its being sustained by the court, the other bills were successively introduced and passed, possibly with not as justifiable motives for their adoption. Now, it may be possible that some of these bills were passed designedly for political or partisan purposes; but I differ with the gentleman from Albany [Mr. Harris], and with the gentleman from Richmond [Mr. E. Brooks], and also with the gentleman from Onondaga [Mr. Alvord], if I understand them correctly, in imputing to the Legislature a purely political and partisan or corrupt motive in passing those bills. Because I know that, although passed by republican votes, they were not all instigated, they were not all originated, by republican influence, but by individual men from all parties—especially the metropolitan police bill, as the gentleman from Richmond [Mr. E. Brooks] has so frankly stated—who were anxious to get the appointment of the police out of the hands of Mayor Wood. It was said that the lives and the property of people within the cities of New York and Brooklyn were not safe, and the Legislature thought that if this was true, as represented by gentlemen of all parties from those cities, and there was no constitutional prohibition or impediment in the way of passing a law for the appointment of the police which would watch over and guard the property

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and lives of the people of those cities, it was their duty, in the exercise of their functions as law-makers, to provide such a mode of appointment. And, although it was generally understood by men of all parties that the metropolitan police bill was an evasion of the intent of the Constitution, as declared in section 2 of article 10 of that instrument, yet they submitted to it and voted for it for the purpose of protecting the lives and the property of the people within those cities. I confess, Mr. Chairman, I would not be so particular in detailing the history of this metropolitan police bill if gentlemen belonging to the democratic organizations and the American organizations, as it was on that day, would come forward and frankly acknowledge their participation in the passage of the metropolitan police bill. But when I know that gentlemen who rank themselves as first class democrats will go to Mozart and Tammany and there tell their hearers that these bills have been forced upon the people of New York and Brooklyn for the exclusive and sole purpose of domination over them, and solely by the republican legislature and the republican State government solely for party purposes, I choose to dissent from that view of the case, and I regard those gentlemen uncandid and ungenerous and deserve exposure whomsoever and wherever they may be. Let these gentlemen when they appear before and address their Tammany and Mozart organizations and auditors, confess their participation in the passage of these bills. So far as they have been instrumental in their passage —

Mr. VERPLANCK—Will the gentleman allow me to ask him a question. Did not the entire delegation from the city of New York vote against this bill? And was it not passed by a party vote? In looking over the vote in the Assembly I find no man I recognize as a republican, except Mr. Boies, of Erie, voting against the bill.

Mr. BAKER—I think that is so, but it was understood in the Legislature of that year that the members of Assembly and Senate of New York and Brooklyn were Wood men—they were all friendly to Mr. Wood; and he had control of the organization. But what I mean by democrats coming here, is responsible men from New York, not members of the Legislature, and whose names do not appear as legislators—men of property, of education, of character and standing, men of high social position. They came here and asked the Legislature to pass the metropolitan act and other acts appointing commissions in addition to the metropolitan police bill. It is that class of men who have privately favored the passage of these commission bills and publicly denounced their passage, that I desire to smoke out from their position—their secreted position. I ask them in all honesty, when they appear before their democratic audiences of Tammany or Mozart, to confess that they went to Albany and asked the republican legislature to pass this bill. If they will do that, I have not another word to say to, or against them. If they will as frankly confess as the gentleman from Richmond [Mr. E. Brooks], and say that it was a mistake, that it has not worked as they then anticipated and hoped it would, and as we all hoped it would, I have no further complaint against them, but concede that men and parties have a right to change their opinions upon a change of circumstances, or upon knowledge acquired from experience of the inexpediency of the acts passed by their approval. I find no fault with gentlemen who exhibit that candor in this Convention or in the Legislature. Sir, I am opposed to the continuance of any of these commissions a solitary day beyond the shortest possible time required to repeal them. If I could by my vote, I would repeal every commission to-night. I cannot say but what it might, and it probably would, have a bad immediate result upon New York city. I cannot say that the city of New York would have as good a police as they now have; but I believe, as a republican, in the doctrine and in the principle of allowing the people, the voters, the power and right to appoint or elect their own local municipal officers. It is said by some gentlemen upon the republican side here that it would have a disastrous effect and influence upon the business and the prosperity of the cities of New York and Brooklyn, and render life and property less safe than under the present system, but I cannot see it in that light. I would not voluntarily do anything to retard the progress of the great cities of New York or Brooklyn. I would do nothing to endanger the lives or the property of the people of those cities. But I believe in the capacity of the people for self-government, and if evils should arise I believe the people are competent to meet and overcome them, and establish as good a local system of government as those enjoyed by the other cities of the State. And it is upon that conviction that I intend to vote upon this article. I would go farther, beyond the repeal of the law. I would incorporate in the Constitution we are about to propose to the people a prohibitory clause against the Legislature creating or appointing new officers anywhere. I believe it is the province of a Constitution, and it is our duty as a Constitutional Convention, to specify and provide for the public officers necessary to administer the government in all the localities of the State; and I would prohibit the Legislature from increasing that number as to any important offices. To do that it would be necessary to incorporate something like the tenth section in this report, something in the phraseology or the words of that section. But I would reserve to the Legislature the power over the commissioners of emigration, because I deny that the citizens of New York and Brooklyn are exclusively and alone interested in the reception, passage though or distribution of emigrants from the city of New York. Every man in the State is interested in the emigration to this country. Emigrants arrive and land in the city of New York, but it is well known that a very small proportion of them remain there. They have friends and relatives scattered in every county in the State, and in every State in the great West; and upon their passage from New York westward they are frequently obliged, from their necessities, to call upon the public authorities of the different counties for their support and maintenance. And New York enjoys as ample security and indemnity against the necessity of supporting these paupers as Montgomery, Wash-

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ington or Herkimer counties. The law provides an equal mode of protection for all the counties, and New York can properly claim no additional means of protecting herself against the pauperism arising from the necessities of these poor emigrants than any other county in the State, and hence I would reserve in the Constitution the power in the Legislature to appoint the commissioners of emigration in which every part of the State is equally interested with New York. I would also retain the power to legislate for the port of New York. The harbor of New York does not belong exclusively to the city of New York; it belongs to the State, and beyond that to the whole nation for commercial purposes, and beyond the corporate rights of the city of New York for purely municipal purposes, I would give them no power or jurisdiction over it except what was necessary for the execution of their municipal laws, but not in any way to interfere with the laws of the State regulating the State or national commerce. I would also reserve the power in the Legislature to appoint and control the quarantine or sanitary commissioners, because the people of the entire State, in the interior and especially along the great public thoroughfares, the Hudson river, the New York and Erie railroad, and every other thoroughfare of this State are equally interested with New York, are just as deeply interested in protecting themselves against disease, sickness, and epidemics as the people of New York and Brooklyn; and hence the Legislature should have control, and that control should be properly exercised by the passage of general laws applicable to New York and every other city and town in the State. I would also reserve the control of the public lands under water in the harbor and bay of New York which are owned by this State. Sir, some of my republican friends seem to be very much alarmed at the prospect of adopting in the Constitution a clause vesting all power in the cities to choose their own police officers. Now, I confess that I feel none of that alarm. Our attention has been called to the riots of 1863, and I feel constrained to differ with all gentlemen who have spoken upon this subject in respect to the efficiency or the power of the metropolitan police force in any of the cities to suppress or put down that riot. As the gentleman from Queens [Mr. S. Townsend] remarked in an early stage of the discussion of this question, it was a part and parcel of the invasion of the north by General Lee. It was a part of the programme planned by the rebels at Richmond and their sympathizers here, a necessary part without which General Lee did not expect to succeed in his invasion. It did not indicate the normal condition of the people in this State, or in any of its cities. Why, the riots, sir, in New York city were not exclusive to that city alone. They were not limited to Troy alone. I remember very well at the little town where I reside, we received hourly bulletins, half hourly, quarter hourly, every ten minutes even, the announcement of, "riot in Burlington," "riot in Boston," "riot in Springfield," "riot in Troy," "riot in Albany," and riots in almost every considerable little town from Albany all the way to Buffalo and even in the far West. These telegrams which reached us telling us that there were riots going on in all the cities and almost every village in the entire North were sent for the purpose of inciting riot and bloodshed, or why did they happen just at that particular period? They happened at that particular time, sir, because it was a part of the programme of the invasion by General Lee of the North, and no argument, no speechifying, no writing which any man can do or accomplish can ever blot or obliterate it out of the history of the country during those dark days of 1863, out of the history of the times. It is a fact patent to every body now, and it was to me at the time. My democratic friend from Queens [Mr. S. Townsend] has had the candor to tell this Convention the truth frankly that it was a part of the programme of the invasion of General Lee, and hence—

Mr. S. TOWNSEND—Will the gentleman allow me. I did not go quite so far as that. [Laughter.] I did not say it was a part of the programme of General Lee. I said it was an exceptional case. There were riots everywhere. My own village was disturbed. We were all excited there. It was the theme of the day, and riots were in every direction.

Mr. BAKER—I thank the gentleman, as he confirms what I have said. I did not intend to say that the gentleman represented that it was a part of General Lee's campaign, ordered by him; but it was the act of his confederates and sympathizers here at the North. That is what I intended to say. So now I have said what I intended to. [Laughter.] Now, to go a little back—and I am making these remarks more for my republican friends who have so eloquently depicted the evils and perils of these riots, than for my democratic friends in this Convention—I want to show them that there was no police force in the North (metropolitan or other) that could have put down those riots, which were a part of that rebellion in the North, as my friend from Queens [Mr. S. Townsend] has called it a part of the invasion, I will try and satisfy him and my republican friends, if they will listen to me for a few moments, that that riot was so widely spread throughout the whole North, and so carefully prepared, that no police force within the State of New York, or in the world, as such, could have put it down. It was put down, however. And I will show you in a moment how it was put down by a better and a higher power than any city police—a power that I rely upon in preference to any police that can be appointed by the Legislature, or the mayor of any city, or elected by any people of any State. Early, sir, in the month of March—I think in the month of March—Mr. Vallandigham had been defeated as a candidate for Governor of the State of Ohio. He immediately returned to the State of Ohio and there commenced a series of meetings and a course of agitation against the federal government on account of its stringent measures to suppress the rebellion. He spoke against the government, and said they were illegally and unconstitutionally arresting people and putting them in prison, depriving them of the right of trial by jury, suspending the writ of *habeas corpus*, and told the people that these illegal, unconstitutional and aggressive acts on the part of

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the government might be lawfully resisted, and it was for such disloyal teachings and doctrines by Mr. Vallandigham, to the people of Ohio, that he was arrested. I think this was on or about the fourth of May, but not until after he had been admonished by an order of General Burnside, promulgated April 13th, 1863, that "all persons found within our lines who commit acts for the benefit of the enemies of our country, will be tried as spies or traitors, and if convicted will suffer death," and adding that "the habit of declaring sympathies for the enemy will not be allowed in this department; persons committing such offenses will be at once arrested with a view to being tried as above stated, or sent beyond our lines into the lines of their friends. It must be distinctly understood that treason, expressed or implied, will not be tolerated in this department." This was at the time when Morgan was about crossing over into the States of Ohio and Indiana, and Lee was coming over the Potomac into Maryland and Pennsylvania, about the commencement of the month of May. Mr. Vallandigham sued out a writ of *habeas corpus*, before Judge Leavitt, of the State of Ohio. The writ was dismissed after a full hearing by Judge Leavitt, with these comments; and I ask the indulgence of the Convention for one moment while I read the concluding remarks of this judge in denying the application of Mr. Vallandigham for the writ of *habeas corpus*, showing the estimation in which Judge Leavitt held the arrest of Mr. Vallandigham, and the causes of his subsequent conviction. In dismissing the application the judge remarks that "Men should know and lay the truth to heart, that there is a course of conduct not involving overt treason, and not therefore subject to punishment as such, which nevertheless implies moral guilt and a gross offense against the country. Those who live under the protection and enjoy the blessings of our benignant government must learn that they cannot stab its vitals with impunity. If they cherish hatred and hostility to it and desire its subversion, let them withdraw from its jurisdiction and seek the fellowship and protection of those with whom they are in sympathy. If they remain with us, while they are not of us, they must be subject to such a course of dealing as the great law of self-preservation prescribes and will enforce; and let them not complain if the stringent doctrine of military necessity should find them to be the legitimate subject of its action. I have no fear that the recognition of this doctrine will lead to an arbitrary invasion of the personal security or personal liberty of the citizen. It is rare, indeed, that a charge of disloyalty will be made on insufficient grounds; but if there should be an occasional mistake, such an occurrence is not to be put in competition with the preservation of the nation; and I confess I am but little moved by the eloquent appeals of those who, while they indignantly denounce violation of personal liberty, look with no horror upon a despotism as unmitigated as the world has ever witnessed." There, sir, is a graphic delineation and description of the conduct and character of the actions upon which Mr. Vallandigham was arrested, convicted, and sentenced to Fort Warren. He was convicted, I think, on the fifteenth of the month, and on the nineteenth of the same month Mr. Lincoln modified the order of the court which had tried Mr. Vallandigham, and allowed him to pass through our lines and go among his friends; providing, however, that in case he should return to disturb the peace of the people who were struggling to support and sustain their government, he should be confined in prison and kept there until the end of the rebellion. Now, sir, it was common doctrine at that time, among a certain class of men whose sympathies were with the rebellion, that the government was violating and destroying the personal rights of individuals, that the government was overthrowing the Constitution and all our civil rights secured by that instrument. Let me ask any gentleman, democrat or republican, whether if we believed that our government, national or State, was designedly effecting the overthrow of our rights under the Constitution, we would remain quiet, or whether we would not do as thousands of men felt it their duty to do, rise against the government in any mode or manner possible to defeat the completion of our ruin? But, sir, I come nearer home. These incidents and occurrences of which I have spoken, happened in the far West; in Ohio, in Illinois, and in Indiana, and some even beyond the Mississippi. In all that region of country these doctrines were taught by leading and influential men, the common people who were not constitutional lawyers or learned scholars, were told by their leaders that the government was overthrowing their rights and liberties by these arrests. Now, that we can look back upon the scenes of those days, is it at all strange that riots and resistance to the government occurred? To my mind, sir, it is a greater wonder that more such disturbances did not occur. However, I said I was coming nearer home. In this city, sir, a democratic convention composed of gentlemen of wealth, intelligence and character of this city and surrounding neighborhood, met soon after Mr. Vallandigham's sentence had been carried into effect by passing him into the rebel lines among his friends. That respectable and influential convention met in this city and here denounced the federal government and the President for the violation of the rights of the citizens in the arrest of Vallandigham; and I ask the indulgence of this Convention for a moment, while I read two or three of the resolutions that were passed by that convention. It passed a series of resolutions, among which I find the following. Having first set forth certain principles which they held and which we all held sacred, they proceeded to say:

"*Resolved*, That in view of the principles, we denounce the recent assumption of a military commander to seize and try a citizen of Ohio, Clement L. Vallandigham, for no other reason than words addressed to a public meeting in criticism of the course of the administration, and in condemnation of the military orders of that general.

"*Resolved*, that this assumption of power by a military tribunal, if successfully asserted, not only abrogates the rights of the people to assemble and discuss the affairs of government, the liberty of

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speech and of the press, the right of trial by jury, the law of evidence and the privilege of *habeas corpus*, but it strikes a fatal blow at the supremacy of law and the authority of the State and federal Constitutions."

And I find in another resolution a demand made of the head of our government in these words:

"*Resolved*, That in the election of Governor Seymour the people of this State, by an emphatic majority, declared their condemnation of the system of arbitrary arrests and their determination to stand by the Constitution; that the revival of this lawless system can have but one result, to divide and distract the North and destroy its confidence in the purposes of the administration; that we deprecate it as an element of confusion at home, weakness to our armies in the field, and as calculated to lower the estimate of American character and magnify the apparent peril of our cause abroad; and that, regarding the blow struck at a citizen of Ohio, as aimed at the rights of every citizen at the North, we denounce it as against the spirit of our laws and Constitution, and most earnestly call upon the President of the United States to reverse the action of the military tribunal which has passed a 'cruel and unusual punishment' upon the party arrested, prohibited in terms by the Constitution, and to restore him to the liberty of which he has been deprived."

Now, Mr. Chairman, of my friend from New York and of my friend from Troy, I would inquire, in the name of common sense, what would they expect from the mass of the common people, who make no pretense to wisdom, or to being constitutional lawyers, what would they expect from them under such circumstances, relying, as they naturally would, upon their leaders, gentlemen of high standing, who composed the officers and body of this meeting, promulgating to the people doctrines such as I have read from these democratic resolutions, that our national government, in its effort to overthrow the rebellion, was guilty of treason against the rights and liberties of the citizens? Would not such representations from their leaders necessarily and naturally exasperate the mass of the people and provoke them to riot, outrage and bloodshed? Remember, too, that this was just after President Lincoln had made a call for a large number of men to sustain our armies in the field. That was the time chosen, sir; and when in the midst of national disaster, delay and defeat, existing from the Atlantic to the Pacific, and spreading gloom and apprehension over the entire North, when our cause seemed almost hopeless to human eyes, we find a convention of respectable, wealthy and intelligent gentlemen sitting in the capital city of the State and promulgating these doctrines so hostile to the efforts of the government, was it not directly calculated, sir, to provoke riots and resistance to the general government?

Mr. DEVELIN—Will the gentleman allow me to interrupt him a moment?

Mr. BAKER—I will yield for a question.

Mr. DEVELIN—That is all I ask the gentleman to yield for. I wish to inquire whether, when John Brown invaded Virginia at Harper's Ferry, he was not a leader of a mob?

Mr. BAKER—I am very glad the gentleman has called my attention to that event, and I will answer him now, that I have always held that John Brown was guilty of violating the laws of Virginia, but the man who procured the arrest of and had him declared guilty of treason was at that very time plotting against his country and conspiring for its overthrow. That man who took John Brown, gave him no time for a fair trial, no time for investigation or defense, and who was aided by the same Vallandigham who was there on the spot with Mr. Mason, and who, no doubt, was one of the conspirators that induced John Brown and his party to be there, in violation of the laws of Virginia, and sought to implicate with him William H. Seward and other prominent republicans—that man has the unblushing impudence to talk of the treason of John Brown.

Mr. DEVELIN—I did not say any thing about his treason.

Mr. BAKER—I do not refer to the honorable gentleman from New York. I speak of Henry A. Wise, of Virginia. He is the man that hung John Brown for alleged treason, when he himself was plotting the destruction of his country, although, as Governor of his State, he was under the obligation of an oath to support the Constitution of the United States. That was the man that hung John Brown for treason, after a mock trial of a wounded and dying man.

Mr. DEVELIN—If the gentleman will allow me to interrupt him again for a moment, I will say that perhaps the finest criminal lawyer in the United States, certainly the finest in the State of New York, Mr. James T. Brady, has publicly expressed an opinion about that trial in which I perfectly concur: that the trial of John Brown at Harper's Ferry was an outrage upon all ideas of justice.

Mr. BAKER—That is an opinion in which I heartily concur, and I have a higher respect for Mr. Brady for expressing it.

Mr. DEVELIN—Then you will have a higher respect for me also, for I agree with him. [Laughter.]

Mr. BAKER—To come back, sir, from this digression, I have not enumerated all the causes which led to the riots of 1863. This same convention which met in the city of Albany promulgated a sort of proclamation in the form of resolutions declaratory of the rights of the people, and a letter was read on that occasion (I think and am quite sure it was on that occasion) from Governor Seymour, in which he admonished his friends that it was "time to pause" in their support of the government. When you undertake to condemn those poor, deluded, frenzied rioters, and before you inflict upon them the full measure of punishment that can be inflicted by public sentiment, I ask you to arraign before the bar of public opinion the men who caused those rioters to be there. Think for a moment of the Governor of this great State proclaiming that it was "time to pause" in the support of the government.

Mr. CHESEBRO—Does the gentleman mean to quote Governor Seymour as saying that?

Mr. BAKER—I do, as saying that substantially.

Mr. CHESEBRO—That is your construction of

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his language. He never said such a word in his life.

Mr. DEVELIN—Governor Seymour harangued the rioters in New York and addressed them as "my friends." Perhaps that is what the gentleman from Montgomery refers to.

Mr. BAKER—No, sir; I am speaking of a letter addressed to the Vallandigham meeting held in this city which I have already described, and of which the Hon. Mr. Corning was chairman. I may be mistaken as to the precise language of the letter, but as to the purport of it I cannot be mistaken. That letter is fresh in the recollection of the people of this State, and they will not soon forget it. Now, I ask gentlemen to contemplate the spectacle of the Governor of this State declaring to the people that it was "time to pause" in their support of the Federal government, and saying it at a time when, to all human eyes, our fortunes seemed darkest.

Mr. COMSTOCK—I am very sure that the gentleman from Montgomery is mistaken, because I have a very distinct recollection of the matter. I know very well that Governor Seymour wrote a letter to the Albany meeting, but in that letter he did not say that it was time to pause in support of the government. He did denounce the arrest of Mr. Vallandigham, and his trial before a military tribunal, as unconstitutional and tyrannical in which I agree with him.

Mr. BAKER—Will the gentleman from Onondaga, while he is up, explain the connection in which Governor Seymour did say that it was time to pause, and in respect to what?

Mr. COMSTOCK—I deny that he said it at all; he used no such expression.

Mr. BAKER—I beg the gentleman's pardon, but I say that expression was used by Governor Seymour; and if this discussion shall continue until I can reach my office, I will produce it in his published letter.

Mr. DEVELIN—It may be that he was quoting one of our English poets who talks about an "awful pause." [Laughter.]

Mr. BAKER—I do not understand the purport of the gentleman's remark, but Governor Seymour will hereafter realize it. Gentlemen in this Convention may attempt to laugh and sneer down if they can, this exposure of Governor Seymour and his connection with the riots of 1863; but let the families of New York and Brooklyn, the families of those who lost their lives, of those whose blood was spilled in those riots, let them speak upon this subject, and perhaps they are capable of expressing as correct an opinion and appreciation of Governor Seymour's motives and intentions at that time, as any of the members of this Convention who are now attempting to laugh down a matter so disastrous to life and property in New York as this. That letter, sir, was followed in a few days by a speech from the Governor, delivered in the Academy of Music in the city of New York. I believe there are gentlemen present in this Convention who heard that speech. I read it the next day after its delivery, and as I have some of the language used at hand, I will read it to this Convention. The Governor of the State appeared at the Academy of Music in New York, and delivered a speech upon the crisis of the times. He went there to meet his fellow citizens of the great city of New York, which is undoubtedly as orderly and quiet a city as any in the State, a city in which riots cannot be very easily provoked, and there, in his address to an intelligent audience, and after talking of the calamities that our armies had suffered from time to time, after enumerating the promises with which the people had been treated of victory on the Mississippi and upon the Potomac, and the disappointments they had realized, and after speaking of the general gloom that was pervading the whole country, of the useless expenditure of life and property, the demoralization of the people, in all of which calamities the republican administration then in power had, as he alleged, involved the nation, the Governor said, addressing his political opponents—"Are you not exposing yourselves, your own interests, to as great a peril as that which you threaten us? [Meaning the Vallandigham party.] Remember this, that the bloody, treasonable and revolutionary doctrine of public necessity, can be proclaimed by a mob as well as by a government." In which sentiment he was applauded by his friends and sympathizers. This extract nearly completes the picture. In this you see the Governor of this great State, which claims to have more wealth, more population, and more character than any other State in the Union—you see the Governor of the State invoking the mob spirit in the city of New York, and invoking it not merely in that city, but throughout the State. What of it? This was on the Fourth of July, and on the thirteenth, when the draft commenced, that mob, remembering what their Governor, their "friend," had told them, that a mob could proclaim the law of necessity as well as a goverment, broke out into open and destructive riot. That speech of Governor Seymour's was not only an incitement, but to the rabble a justification of that riot, and its spirit was the spirit that occasioned or threatened mobs in nearly every city and village in the State. Now I desire to say to my friend from New York and my friends from Troy, that we in the country had no metropolitan police to keep the peace for us, and we did not want any; and I may say, furthermore, to those gentlemen, and to Superintendent Kennedy, that we in the country knew precisely the state of feeling that existed, and we predicted that riot several days before its actual occurrence. We did not get the Governor's speech until the morning of the 5th, but when we got it we had no difficulty in predicting the result, and were prepared for it; and had the people in New York and Troy been as the people were in the Mohawk valley, I assure gentlemen that the metropolitan police would not have been necessary to put down the mob. It was well known that the mob spirit could not run riot with impunity in any of the towns, cities, or villages west of this. It may not have been known by the infatuated men who were ready to imbrue their hands in the blood of their neighbors; but the leaders knew what would be the sure and inevitable consequence of any attempt at riot in that part of the State, and they knew that no mob could have resisted the power of the people who would

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have resolved themselves into a police throughout the State. I say that if the people of Troy and New York had done that, their riots would have been much less in extent than they were. Had Colonel O'Brien given the mob "canister" first, and then read the riot act, and had the authorities adopted the Napoleonic plan to disperse the rioters with canister first, and then read the riot act [laughter], there would have been not a tithe of the loss of blood or of treasure that there was. As I have already said, the people in the Mohawk valley and throughout central New York were prepared for such disturbances, and the leaders of this riotous spirit, knowing the preparation of the people, dared not instigate a riot there, nor provoke the shedding of a drop of blood, even at the instigation of the Governor's speech. To have done so would have been as fatal to them as the deadliest poison, because no earthly power could have rescued them from the improvised police that would have seized them on the first attempt at bloodshed. I was not present during the riots in New York, but I saw sketches in the newspapers for weeks after, detailing the incidents that occurred in different parts of that city. Law-abiding citizens, some of them, undertook their own defense, and I call the attention of the Convention to the attitude of our non-combatant friend Mr. Greeley, on that occasion. He never fights, but he had his hot water and hand grenades ready, and the mob knew it, and they did not, nor dare not disturb him. I have seen it stated that another distinguished gentleman in the city of New York, who was a prominent intended victim of the same mob feeling, had a lot of old muskets ready in his house, one round of which was said to have satisfied the appetite of this lawless mob. I mention these cases because I say that is how the mob spirit would have been met in the western part of this State, if it had broken out, and because it was the knowledge of this on the part of the leaders that preserved order there, not only at that riotous time, but from the beginning of the rebellion to its close. The suppression of the riotous spirit at that time was the greatest triumph of the war, and it was felt to be so, not only in New York, but in Richmond, not only in the east, but in the west, at Washington and along the Mississippi, from St. Louis to New Orleans. It was felt, then, that the people were determined not to pause in their support of the government, whatever governors or politicians might do. Such a power was higher and better than any police, and it was a power sufficient for the emergency. And now, sir, I have done with the mob. I felt it my duty to say what I have said to my friend from New York, and my friends from Troy, and to tell them that the proper way upon such occasions, is not to look to the police officers for the protection of property or life, but to resort to that higher law inherent in every man, which impels him to protect his property and his life against outrage and murder. To come back, Mr. Chairman, from this digression to the question more immediately connected with this discussion, it is objected to this report that it proposes to divide up the sovereignty of the State. Well, sir, it would not be becoming for me to undertake to discuss that question now. The argument of my honorable friend from Onondaga [Mr. Comstock] to whom I always look and listen with respect and reverence, and whom I confess I greatly admire for the clearness and power with which he discusses the various questions to which he gives his attention in this Convention, induces me to pass over that question. It has been so amply and clearly, and as I think, unanswerably discussed by that gentleman, that I should look upon it as a weakness in myself to attempt to make any thing connected with that subject more clear. I will say, however, and I am not sure but what he said it in a much better manner than I can, that if it is parting with the sovereignty of the State to vest these powers in the electors of cities, why does not that argument apply to the country, in regard to the election of county clerks, sheriffs, surrogates and county judges. Undoubtedly it is a part of the sovereignty of the State. Every exertion of power, constitutionally made, is based upon the sovereignty of the State, and the sovereign people to whom we are about to submit the labors of this Convention, are competent to say how much of that sovereignty shall be delegated to and exercised by the Legislature, how much shall be exercised by the supreme court, and how much by each of the other departments of government. The people, the sovereign power, has a right to say how much of its power shall be imparted to the people of the county or the town, and in what mode it shall be exercised, and it does say it. Now, I would inquire of my republican friends whether they would consent to a clause in the Constitution providing that the Legislature might provide for the appointment or election of our judges and our county officers—our surrogates, our county judges, our sheriffs, our county clerks, and our justices of the peace. Would they consent to that? I do not think that my constituents would. I know that we would claim the right to elect our own officers; and we desire to have specified in the Constitution, what officers we may elect; and we want to have the Constitution deny to the Legislature the power to increase the number of those officers, or to impose upon us officers of their own appointment, against our will, against the will of the people residing in the district. Now, if the Legislature can create one officer, they may create ten. If they can impose upon us a tax of one thousand dollars without our consent, they can impose a tax of twenty or a hundred thousand dollars; and it is because of this uncertainty in regard to these matters that the people object so strongly to this theory that the Legislature is to retain and exercise the power of appointing the officers of localities. I should not be willing to submit to any such constitutional provision, and I am not willing to ask the people of any town or city to submit to what I think my constituents would not be willing to submit to. The proposition is to strike out the first section. As I said before, it is in no way conclusive of the result of the debate upon this article. We all concede the right of the people to elect their own strictly municipal officers. As I understand it, nobody proposes to take that

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right from them. But in looking over the report I frankly say that I do not concur with my friend from New York [Mr. Opdyke], who proposes a property qualification for the electors of aldermen. I do not believe it would be acceptable to the electors of either the city or the country. I entirely concur with my friend from New York [Mr. A. R. Lawrence] in the views that he has expressed upon that subject. We have not required a property qualification in any other part of this Constitution. We allow the towns to elect their justices of the peace, and the counties to elect their county judges, their surrogates and their clerks; and I cannot see any reason, unless there is some great defect in the character of the electors of the city of New York, why they should be deprived of the same right which we have and demand. I am also opposed to one provision in the report of the majority of the committee which proposes to vest the power in the mayor to appoint the heads of the departments, and to dismiss them at his will. I have no personal interest or feeling about that, but I regard it theoretically as a dangerous power to vest in any one man. It seems to me that if in a city like New York the power and responsibility was divided up between the mayor and the common council, or between the mayor and some other responsible officer elected by the people of the city, it would be better. I desire to hear the views of gentlemen from the city upon this question, but theoretically I am opposed to vesting that great power in the mayor of New York or of any other city. It is asked by gentlemen who are opposed to this report, and who are in favor of adopting, as I understand, the clause of the Constitution of 1846 in respect to cities and villages, "What if Mayor Wood had the power proposed to be vested in the mayor by this article—what a horrible state of things you would have in the city of New York!" Now, my theory is that if Mayor Wood exercised that power imprudently, injudiciously or wrongly, to the prejudice of the people, there is wealth and intelligence and power enough among the people of that city to correct the evil themselves, just as we in a county, having elected bad officers at one election, go at it the next time and elect a better set of men. I believe that under this arrangement the people of the city of New York and the city of Brooklyn will be more attentive to their primary caucuses, and more careful in the selection of their candidates for office. The responsibility will be devolved upon men of wealth and character, who now, I fear, take but little interest in politics, unless they are speculators or professional politicians. I am told that you can go into that city upon the eve of a general election, when the whole country is aroused with excitement in regard to the questions before the people, and find there twenty or thirty thousand business men sitting quietly in their offices and stores, who hardly know that there is an election impending. Now, the maxim that "eternal vigilance is the price of liberty" applies to the city of New York as well as to the rest of the world, and the men of wealth and character in that city must go out and elect good men to serve them in official positions; and if they do not, if they elect bad men, the people of New York must suffer the consequences. It is said, however, that the people of the country may suffer the consequences. I answer that if there is such a large number of persons from the country doing business in the city of New York as we are told there is, and if they cannot find satisfactory municipal protection there, let them go and do business where they can be protected. These evils will work their own cure, and I desire, sir, to vest in the people of these cities all the power of local self-government that is vested in the people of other portions of the State. Mr. Chairman, I have already said more than I intended to say when I got up, and I here conclude.

Mr. DEVELIN—I do not rise to make any extended remarks on this subject of mobs, but merely to say to the gentleman who has just taken his seat that there was no intention on my part to laugh or sneer at him. I have known him for a great many years, and there is no gentleman in this Convention for whom I have a greater respect. His remarks about the commissioners of emigration I entirely agree with. He has been almost a father to that commission, and, as he says, it is a national matter. I remember, years and years ago, when he was in the Legislature, that he did all he could to advance the interests of foreigners who were coming to the port of New York, and to support the commissioners of emigration. I make this statement because he seemed to think that I was sneering at him.

Mr. BAKER—I did not understand the gentleman to mean any sneer at me personally. I supposed it had reference to the remarks that I was making in respect to the letters and the speech of Governor Seymour and the effect I attributed to them.

Mr. DEVELIN—Well, I think the gentleman has misconstrued Governor Seymour. I am no friend of Governor Seymour, and I do not agree with him, although a democrat. [Laughter.] Well, you need not laugh. I am not a friend of his, but I know very well that when you want to talk to a mob it is just as well to call them your friends as "you brutes." [Laughter.] I think Governor Seymour had a very distinguished example for his mode of address upon that occasion, that of our blessed Saviour, who once said of a mob, "Forgive them, for they know not what they do."

Mr. FRANCIS—I move that the committee now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Francis, and it was declared carried.

So the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. CORBETT, from the Committee of the Whole, reported that they had had under consideration the report of the Committee on Cities, had made some progress therein, but not having gone through therewith, had directed their chairman to report that fact to the Convention and ask leave to sit again.

The question was put on granting leave, and it was declared carried.

Mr. FRANCIS—I move that the Convention do now adjourn.

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The question was put on the motion of Mr. Francis, and it was declared carried.

So the Convention adjourned.

WEDNESDAY, January 29, 1868.

The Convention met pursuant to adjournment.

Prayer was offered by the Rev. R. H. ROBINSON.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. McDONALD—I give notice that I shall move a reconsideration of the vote by which the amendment I proposed to the first section of the report of the Committee on Education was lost.

The PRESIDENT—The motion will lie on the table under the rule.

Mr. AXTELL—I ask leave to present a report from the select committee in relation to providing for disabled soldiers.

Mr. AXTELL proceeded to read the report as follows:

The select committee to which was referred the subject of permanent provision for disabled soldiers, having had the matter under consideration, report as follows:

The obligation of a government to provide fully and amply for the care of soldiers disabled in its service, is of the most sacred character.

In this nation the federal government, the representative of nationality, is especially charged with the fulfillment of this obligation.

There are two methods by which the national government cares for its disabled soldiers.

There is a system of pensions, graduated according to the extent of disability, and, in addition to the pensions paid, homes have been established, to which are admitted those who have been totally disabled in the service, and others whose disabilities are of a very serious nature. There are three of these homes already established, one in each of the following States: Maine, Wisconsin and Ohio.

The pensions allowed, while probably larger than are paid by any other government, are not an adequate provision for those who are totally or severely disabled; and the homes are only available to such as are willing to separate themselves from all home associations.

The highest pensions to private soldiers are twenty-four dollars per month, and these are paid to such as have lost both arms, both legs, both eyes, or an arm and a leg, etc.

For the loss of an arm, a leg or an eye, the pension is fifteen dollars per month.

In view of the actual needs of these men, who does not see that these provisions are totally inadequate? They are a mere pittance doled out to them, instead of being an honest recognition of a just and sacred claim, and a fair attempt to satisfy it. The men who, in defense of the country, have sacrificed their power of providing for themselves—the men who are maimed and mutilated—should receive from the country, not merely a sufficiency to keep them from starving and to cover their nakedness, but the means of a comfortable and honorable livelihood.

Can a man maintain and educate a family on the highest pension allowed to a private soldier? Some of these men have families dependent upon them, and they doubtless have the same laudable ambition to provide as well for them as that which inspires men who have never periled their lives for the integrity of the nation; yet they are doomed, by the narrow and stinted policy of the government, to see those dependent upon them in a condition of penury, from which they have no power to elevate them.

Others, and probably a majority of disabled soldiers, are young men; they are without families, and by the circumstances in which they find themselves, are practically forbidden to enter into domestic relations—to gather around them the home circle; they have no means of maintaining families, and therefore must become vagabonds and outcasts from society. It is exceeding difficult for those of them who have the power to perform some labor to obtain employment, employers preferring the service of men who are able to do the full work of men.

The avenues to those public positions whose duty they might perform, are carefully and jealously guarded by able-bodied politicians who relax not their vigilance even at the approach of the disabled Union soldier.

It is not at all probable that the national government will be induced to make a more complete provision for disabled soldiers; the question therefore arises, will the State add to the pittance which these men receive?

Your committee are of opinion that this question is an appropriate subject of legislation rather than of constitutional provision, and therefore recommend the adoption of the following resolution:

Resolved, That this Convention earnestly and respectfuly recommend the Legislature of this State to make a further and permanent provision for the soldiers of this State, disabled in the military service of the United States in the war for the suppression of the late rebellion.

All of which is respectfully submitted.

N. G. AXTELL,
W. A. REYNOLDS,
J. P. ARMSTRONG

Mr. HATCH—I offer the following resolution:

Resolved, That the Committee upon Revision be instructed to strike out of the article on canal management section 3, which authorizes the Governor to nominate to the Senate and with its consent appoint a superintendent of public works.

Mr. ALVORD—I rise the point of order that the resolution is not admissible.

Mr. HATCH—I wish to say in explanation of the resolution this: Meetings are being held all over the State by carriers and shippers, and they protest against this particular section which has been adopted in the article. They are in favor of the old system, and if the Convention will permit me I would like to read a single resolution—

The PRESIDENT—The Chair would inform the gentleman from Erie [Mr. Hatch] that the mode which he suggests is an unparliamentary way of reaching the object which he desires.

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Mr. HATCH—If they do not object, I see no—

Mr. ALVORD—I object.

The PRESIDENT—The objection is taken by the gentleman from Onondaga [Mr. Alvord], and the resolution must lie on the table.

Mr. HARRIS—The report of the Committee of the Whole on cities has been before the Convention for nearly a week. While I do not desire in the least to abridge discussion, it does seem to me that the subject has been very fully discussed and that gentlemen of the Convention have about made up their minds upon it; and I move, therefore, that hereafter in the consideration of that report, debate to each speaker be restricted to twenty minutes, and that each delegate have the opportunity to speak but once.

Mr. SILVESTER—I shall feel constrained to oppose this resolution, while I have no intention to occupy any of the time of the Convention or committee in the discussion of this question. I understand that there are several gentlemen who wish to be heard upon this subject, and, I think the Convention will desire to hear them on this important subject, and certainly more time has not been devoted to it than has been devoted to other subjects which have not elicited so much attention from the public. I hope that the resolution will not be urged; if it is, I shall feel compelled to insist on a count.

Mr. E. BROOKS—I think it very important to come to a speedy conclusion on the subject of this report. I move to amend the motion of the gentleman from Albany [Mr. Harris], so far as to say that at twelve o'clock the question shall be taken on discharging the Committee of the Whole from the consideration of this report, and that will give an opportunity for every member to debate the question, and to do it before a fixed time. If that be regarded as a test question, the Convention will know whether the article can be adopted or not.

Mr. HARRIS—I am quite willing to accept the amendment suggested by the gentleman from Richmond [Mr. E. Brooks].

The question was announced on the motion of Mr. Harris, as amended on the suggestion of Mr. E. Brooks.

Mr. SEAVER—I would suggest to the gentleman from Albany [Mr. Harris] that he make a still further amendment in addition to the resolution; it is that no member, in the mean time, who has occupied the floor on this question, shall speak so long as any other member desires the floor.

Mr. M. I. TOWNSEND—I do not understand the motion as it has been now amended, and I would like to know what it is in its present shape.

The PRESIDENT—The pending question is on discharging the Committee of the Whole from its consideration of the article roported by the Committee on Cities, to-morrow, at twelve o'clock.

The question was put on the motion of Mr. Harris, as amended, and it was declared carried.

Mr. SILVESTER—I call for the count.

The question was again put on the motion of Mr. Harris, and, on a division, it was declared carried, by a vote of 48 to 27.

Mr. LAPHAM—I offer the following resolution:

The SECRETARY proceeded to read the resolution as follows:

Resolved, That the committee be instructed to amend the ninth section of the article on judiciary by adding at the end and forming a part thereof the following:

"The concurrence of at least two-thirds of the judges holding a general term of the supreme court and the court of appeals, shall be necessary to the validity of a judgment deciding a law by a general or public nature unconstitutional."

The PRESIDENT—The Chair rules that, until the vote by which the article alluded to in the resolution was adopted has been reconsidered, the resolution of the gentleman from Ontario [Mr. Lapham] is not in order.

Mr. HATCH—I desire to know whether the ruling of the chair applies to a resolution which was laid upon the table some three or four weeks ago, and which I shall probably call up to-morrow or next day?

The PRESIDENT—The Chair would inform the gentleman from Erie [Mr. Hatch] that the rule will attach to that resolution, if it has not been already acted upon. The Chair was not disposed to make that point of order, but it having been made by the gentleman from Onondaga [Mr. Alvord] the Chair is bound to respect it.

Mr. FOLGER—I desire to give notice that I shall move the reconsideration of the vote adopting the article in reference to the judiciary, in order that I may move to instruct the Committee on the Judiciary to so amend the article that the present judges of the court of appeals shall remain in office until the expiration of their respective terms.

The PRESIDENT—The article on the judiciary having never been adopted the notice and motion are unnecessary.

Mr. WALES—I desire to call up a resolution offered by me on Friday last, relating to the United States deposit fund.

The SECRETARY proceeded to read the resolution as follows:

Resolved, That the Committee on Revision be instructed to add the following to the article on education and the funds relating thereto, viz.:

SEC. 2. The Legislature shall provide by law for investing in the bonds of the government of the United States under the direction of the State treasurer, the principal of the United States deposit fund, as it shall be paid in to the loan commissioners of the several counties.

The PRESIDENT—The Chair thinks the resolution under its ruling is out of order.

Mr. LAPHAM—I desire to give notice that I shall move the reconsideration of the vote by which the ninth section of the article on the judiciary was adopted.

The PRESIDENT—The question was not put on the consideration of this article upon the separate sections, but upon the article as a whole.

Mr. COMSTOCK—I desire to call up a resolution offered by me yesterday morning.

The SECRETARY proceeded to read the resolution as follows:

Resolved, That the Committee on Revision be

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instructed to amend the article on corporations, so that the Legislature shall not be prevented from chartering literary, charitable and scientific corporations.

The PRESIDENT—The Chair decides this resolution to be out of order under its ruling, as attempting to secure indirectly the reconsideration of the vote adopting the article.

Mr. COMSTOCK—If the section had been passed upon distinctly I should think the point of order well taken, but it is an additional article.

The PRESIDENT—Does the Chair understand the resolution to instruct the Committee on Revision to amend an article already adopted?

Mr. COMSTOCK—It is already adopted. I expect I will have to give notice of a motion to reconsider the vote by which the article was adopted.

The PRESIDENT—The notice will be received.

Mr. VAN CAMPEN—I move to reconsider the vote by which the article was adopted on corporations other than municipal.

The PRESIDENT—The motion will lie on the table under the rule.

Mr. HALE—I give notice that I shall move a reconsideration of the vote by which the section prohibiting towns from bonding themselves for railroads and other purposes was lost.

The PRESIDENT—The Chair is unaware whether that section was adopted by a vote or not.

Mr. HALE—I will simply give notice.

The PRESIDENT—The notice is received.

Mr. MORRIS—I wish to give notice that I shall move a reconsideration of the vote by which the article on the powers and duties of the Legislature was adopted.

The PRESIDENT—The notice is received.

Mr. SILVESTER—I desire to give notice that I shall move a reconsideration of the vote by which that section of the report of the Finance Committee was adopted, which requires the Legislature to provide, in the law for a taxation, that persons shall make statements of their property, under oath, to the assessors.

Mr. ALVORD—There are two other motions to reconsider that question already lying on the table.

Mr. SILVESTER—I will also give notice of a motion to reconsider the vote by which the amendment offered by the gentleman from Ulster [Mr. Hardenburgh] to the article on the judiciary was lost.

The PRESIDENT—That motion has been already reconsidered in Convention.

Mr. SILVESTER—The article, I suppose, can be reconsidered. The article was only referred to the Committee on the Judiciary, to report complete, and then is to be referred to the Committee on Revision.

The PRESIDENT—The notice is received.

Mr. E. BROOKS—That article was referred to the Committee on the Judiciary for the purpose of revision, so that it will take the place of the Committee on Revision.

Mr. BICKFORD—I wish to give notice that I shall move to reconsider the vote by which the article on the organization of the Legislature was adopted, with the view to amend it so as to modify the pay of members of the Legislature.

The PRESIDENT—The notice is received.

Mr. HATCH—I wish to give the same notice in relation to the article on finance, that I shall move to reconsider that.

The PRESIDENT—The notice is received.

Mr. SILVESTER—I desire to give notice that I shall move a reconsideration of the article on the organization of the Legislature so far as it relates to the manner in which members of the Assembly shall be elected.

Mr. LAPHAM—With the permission of the Chair, I desire to make a suggestion. I understood the point of order taken by the gentleman from Onondaga [Mr. Alvord] to go this extent only that, wherever the resolution of instruction sought to impress some new matter in the article which had been passed on by the Convention, it was out of order.

The PRESIDENT—The Chair did not understand the resolution to be limited in that way.

Mr. ALVORD—Will the gentleman from Ontario give way for a moment? For the purpose of going to work and sitting here for another year, and going over the entire business of this Convention, I give notice that I shall move the reconsideration of all the work we have done up to the present time. [Laughter.]

The PRESIDENT—The notice of the gentleman is received.

Mr. LAPHAM—The suggestion I desire to make is this: that, whenever the notice is to incorporate a new section, it is within the rule stated by the Chair.

The PRESIDENT—The Chair must differ with the gentleman. The Chair believes that when the Convention has once adopted an article it should be considered closed; otherwise it must result in the protraction of our session for the good part of another year.

Mr. E. BROOKS—I think the point of order stated by the President is correct. Gentlemen must conclude, if they will reflect, that the ruling of the Chair is a parliamentary one. For example, we adopt an article in full, and take a vote of the Convention upon it. It is obvious that before we can act upon any of the details of an article we must act upon the main question itself. This is parliamentary, and just, and the decision of the Chair is plainly correct.

Mr. LAPHAM—Then I give notice that I will at some future day move to reconsider the vote by which the article on the judiciary was adopted, in order that the article may be amended so as to add at the end of section 9, and as part of that section, the following:

"The concurrence of at least two-thirds of the judges holding a general term of the supreme court and the court of appeals shall be necessary to the validity of a judgment deciding a law by a general or public nature unconstitutional.

Mr. S. TOWNSEND—I wish to offer the following amendment, and ask its reference to the Committee on the Bill of Rights.

Resolved, That the article on the preamble and bill of rights be so amended that losses arising from riotous tumults in any of the counties of this State shall be amply reimbursed by adequate taxation upon the assessed value of the property in such county.

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The PRESIDENT—The Committee on the Bill of Rights having reported, the amendment will be referred to the Committee of the Whole.

The Convention again resolved itself into Committee of the Whole on the report of the Committee on Cities, Mr. RUMSEY, of Steuben, in the chair.

The CHAIRMAN announced the pending question to be on the amendment of Mr. Spencer to strike out the first section.

Mr. CURTIS—I have listened, Mr. Chairman, I hope with candor, I am sure with attention, to this long debate. I have waited, sir, with great patience to hear, if it were possible, what good reason could be urged by any gentleman that the people of the State of New York should delegate to a certain portion of the population powers so momentous, powers so extraordinary, powers, under the circumstances of the case and in view of the character of the city of New York, so unprecedented as those which are recommended in the report now under consideration. But from the calm and careful discourse of the honorable chairman of the committee [Mr. Harris], through the speech of every gentleman who has addressed the Convention, I have listened in vain to learn that reason. The chairman of the committee expressed the sentiment at the outset of the discussion, which has been constantly repeated here, and which has been perpetually urged in the city of New York and wherever the question has been debated, and which involves, as it seems to me, a radical error from which it is absolutely essential, that the mind of the Convention be cleared before it can proceed to a just decision upon this subject. Immediately before the late municipal election in the city of New York, the present mayor of that city in one of his public speeches, spoke of the "unjust interference with the rights of the citizens of New York." The chairman of the committee, in his elaborate address, alludes to "the genius of our institutions, the right of local administration of affairs, the principle of popular government." And, sir, my experience in all that I have heard upon this subject teaches me that there is a conviction that somehow a fundamental principle of the government is invaded by the system which allows the people of the whole State to regulate, in every detail, the exercise of their sovereignty. An earlier mayor of New York, some ten years ago, who at that time was upon the point of disputing with arms the supremacy of the people of the State, to restrain whose action the Governor—then, I believe, present in the city—found it necessary to retain in the city a State regiment upon its march to another portion of the country, another person who had been mayor, I say, under the feeling of which I speak, when again soliciting the suffrages of the citizens for the office of mayor, did not hesitate to say in stronger terms than those used last evening by the gentleman from New York [Mr. A. R. Lawrence], that the oppressions of the city of New York were greater than those against which the colonists, our forefathers, rose in arms. Now, sir, with these views in the minds of persons conspicuous by position or ability, it is essential that as the first step in this discussion we come clearly to a perception of the point, what are the rights of the people of the State. In other words, what is this theory of the government to which allusion is so constantly made? Now, Mr. Chairman, when my friend from Albany [Mr. Harris], or my friend from New York [Mr. A. R. Lawrence], speaks of the local right of government, what does he mean? Does he mean that if in the city of New York you seal up Cherry street at both ends, the people in that street have the right of local self-government? that if you separate Castle Garden from the rest of the city, it has a right to local self-government? that if you separate the first ward or the fifteenth ward, or the twelfth ward or the sixth ward, from the rest of the city, it has a local right of government? Does he mean if you take all the wards together, they have the local right of government? Does he mean, in other words, that in this State a quarter, a tenth or a hundredth part of the population have a right of self-government? Sir, the gentleman does not mean any such thing. No gentleman competent to express an opinion means any such thing as this, although that is the necessary implication from the words that he uses. All that he means is this: that the American principle asserts the right of every political community to govern itself, and that in that community the people are the source of power. That, sir, is all that any gentleman can mean when he uses the phrases of which I have spoken. Now, the political community with which we have to deal, I may remind gentlemen of this committee, is the State of New York. All political authority whatever within the State is derived from the people of the State. They may express their authority either in the fundamental law, known as the Constitution, or they may express it in the form of statute law, or they may reserve to themselves, as occasion may arise, the exercise of that authority. In other words, the political power remains where it belongs, in the whole people of the State of New York? Well, sir, then what is our first duty? Since duties and rights are correlative—since the right of government in this State rests with the people—since the source of all political power in this State is the people—what is the first duty of the people of the State of New York? It is precisely what my friend from Onondaga, Mr. Alvord, declared it to be the other day; it is first of all the security of the most perfect liberty, the security of life, the security of every citizen in the State in the fruits of his industry. These are the great cardinal objects for which governments are instituted. To protect these the people of the State of New York are the source of power, and their duty is to establish such a form of government in this State that all of those rights shall everywhere be secured. Equal and exact justice were the words of my friend from Onondaga [Mr. Alvord]. Sir, in its nature, justice is equal and exact. My friend merely follows the usual phrase, and I follow him that I may give greater emphasis to this truth—such emphasis as may be given by repetition, namely, that the first duty of the people of New York is to secure equal and exact justice on every inch of its domain to every citizen, what-

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ever his condition, however wretched. I say, Mr. Chairman, it is necessary that we should clearly understand this point. I know that there are gentlemen whose votes are probably to be cast in support of the idea that the people of the city of New York have been deprived of certain rights. Sir, I hope they will see that whatever rights the people of the State of New York, who live in that part of it called the city, may have, are not rights, but grants; they are powers that are derived solely from the people, the source of all the power in the State. Now, sir, if I am correct thus far, the next step is this, that, following reason and experience, the people of the State of New York being sovereign, in order to secure the rights, which it is the object of government to secure, institute a certain political organization in the State. After due reflection, they divide the State for political purposes, into counties, cities, towns and villages, school districts and whatever other districts may be found essential to the common welfare—and for what purpose? As a means simply of securing good government to every citizen. To no other purpose do States and counties and towns, and villages, and cities exist, than as a means of securing good government to every citizen of the State. In other words, the whole people delegate certain of their powers to certain smaller parts of the whole people for the purpose of local convenience, but no less, sir, for the purpose of the common welfare. Now, how much or how little of this power shall be granted—how it shall be administered for the local convenience and public welfare—are purely questions of expediency. And that is the question, sir, with which we are now confronted. I say what I have said in order that our minds may no longer be obscured by a false theory of the government. The principle is clear. It is that the people of the whole State are to administer the political power of the State for the benefit of all its citizens, and that whenever any delegation of this power is made, whether it be much or little, it is merely a grant, merely a matter of expediency. Now, Mr. Chairman, the good sense of the people of New York, has decreed certain political organizations in the State. That with which we are now particularly concerned is the organization known as cities. Cities are of two kinds. There is one kind with which we in this country have nothing to do. We have no knowledge of, or any precedent for free cities—cities which are in themselves virtually States, which fly their own flag, which have their own government, which are accountable wholly to those who live within them for their own welfare, cities which in the middle ages stood for liberty against external foreign encroachment. The city of modern free governments is simply a collection of people, for convenience or business or pleasure. Any city in the State of New York is simply, therefore, a collection of some of the people of the State, gathered together for their own convenience, and subject to the supreme authority of the whole people. Mr. Chairman, it will be found that in the history of the State of New York from the beginning, this is the virtual principle that has been observed. The Dongan and Montgomery charters, of which we have heard so much in connection with the history of this State, are simple forms under which the sovereignty established itself, or delegated itself in these cities. The mayor and commonalty under those charters were merely ministerial officers. They performed certain administrative functions, and the city of New York is now what it always has been, a State organization for a specific purpose. All the details which regulate the internal economy of that organization are matters for the whole people of the State to decide, and they will regulate them according to their best view of what the welfare of the State demands. Now, sir, I will not repeat the various authoritative expressions of judicial opinion upon this point which have been made upon this floor. That of Judge Nelson, quoted by Mr. Francis, is conclusive. Chancellor Kent held the same view. Indeed it has been held by our highest courts, and by our wisest and most experienced judges that a city is simply a State organization for a specific purpose. It is only necessary that we bear this constantly in mind in order to remember the relation which the city and its economy bear to the State and its authority. Mr. Chairman, the power and right of the State, or of all the people, over a city, that is any portion of the people, being absolute, are we to fear that there is, as has been charged, a tendency to despotic centralization of this power? This is a favorite doctrine of my friend of the *Evening Post*, which the gentleman from New York [Mr. A. R. Lawrence] quoted to us in his remarks last evening. It is a theory of the controlling and able editor of that paper who probably wrote the article from which my friend made his citation last evening, that there is in all governments a tendency toward centralization, which must be suspected and resisted. But if there be a gentleman here who fears this tendency among us, may I ask him what he understands by a centralized government? May I ask him what the government of France is to-day, which is undoubtedly a centralized power? Why, sir, the Emperor of France—an irresponsible head of the government—governs every department of the empire through certain prefectures. The prefect of the department is immediately subordinate to the Emperor and is responsible to him—the irresponsible head. Does any man in this State discover any resemblance between the uncontrolled will of Louis Napoleon in Paris governing France as it chooses, and the government of all the people of the State of New York, securing life and liberty to every citizen of the State in the method which seems to them best? Is this centralization? Why, sir, centralization is that system in which the will of an irresponsible authority, in which the people have no representation whatever, is supreme. Have we any such authority in this State? Have we any such authority in the United States anywhere? The will of the people, sir, is supreme, and according to the doctrine which has been urged upon this floor, and especially by the gentlemen who now attack the position which I occupy, and who support the extraordinary position urged in the report of the majority of the committee—I say, according to their favorite argument, incessantly repeated, dis-

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trust of the Legislature is virtually a distrust of the people. Sir, by all the theory of our government, it is unquestionably true that the Legislature is always the immediate representative of the people, and it is, therefore, absolutely impossible, under our system, so long as all the people of this State are fairly represented in the Legislature, that there can be, in the sense alleged—in the hideous and painful sense urged by the committee—a dangerous centralization in the government of the State of New York. And, sir, it is remarkable that these very gentlemen who complain of the act of the whole people as a possible centralization of power dangerous to the citizens, are the very gentlemen who insist that all the people shall surrender their power in some of the most important functions of government to certain parts of the people living in certain parts of the State. Now, then, Mr. Chairman, proceeding from these somewhat elementary views which are yet absolutely essential to a proper comprehension of the subject under discussion, the question which meets us is, whether it is desirable that the people of the State of New York shall ever, under any circumstances, surrender their authority over certain political departments of the State. That is a question which has been settled. The people have decided that it is in some respects, and for certain purposes, desirable that this should be done, and, therefore, it has been done, under certain general regulations. But in making the general delegations of power which a wise experience dictates, the question arises whether peculiar and exceptional cases may not require a departure from the general rule, to secure both the local and the general welfare. And that is precisely this case. If the city is exceptional, so may the treatment be. And I claim that in the political community of the State of New York is a city absolutely exceptional in this country—exceptional in all countries, and that since legislation is the most practical of all affairs, it is our duty to bear constantly in mind the exceptional character of that city. During the debates of this Convention whether the city of Albany should be the capital of the State, it was the pleasure of my friend from the city of New York, Mr. Robertson, to indulge in an amplitude of eulogy of that city to which I listened with incredulous amazement. Sir, when Milton described Athens as "the eye of Greece," it was certainly with a touch of poetic imagination, when we remember what the actual situation of the people of Athens was. And, sir, when I heard those brilliant numbers flowing from the lips of the gentleman from New York [Mr. Robertson], describing the city of New York as the capital of all virtue, I felt that he had surpassed Milton in his celebration of the Grecian city. For what is the city of New York? Sir, by nature it is noble in situation. Seated at the head of a broad and ample bay, from which to every quarter of the globe sail its incessant ships, lighting every solitary harbor upon the rim of the globe with their white sails: leaning on the one hand upon the great river which stretches far up into the interior, the struggle for the possession of which was the great contest of the Revolution, from which as with a lithe forefinger, it reaches by the canal far over to the prairies of the West, and gathering through the mountains themselves all the opulence of the western fields into its lap, diffuses them over the world; leaning on the other upon the sinuous arm of the sea which flows to shrewd and rugged New England—the city of New York is unequaled in the splendor of its site, unequaled in its opportunities, one of the greatest of all the cities in the world. Day and night it hums and roars with ceaseless activity. Through its stony streets, like veins, palpitates forever the restless current of its industry. There in the night fortunes shoot up like the frost-work on these windows, and in the morning, like frost-work, those fortunes melt away. There sits the city receiving from every part of the world, at home and abroad, vast contributions of people, of skill, of industry, of goodness, and also of dense ignorance and awful crime. And as I contemplate its enormous advantages, as I pay my willing tribute to all that is noble, to all that is good, to all that is aspiring and improving, and influential, in that city, I must not fail to remind you of the shadow of the picture. I shall not fail to remind you that the very situation which makes that city so splendid, which gives it so noble opportunities, is the final reason for that exceptional character which I assert is essential to any just view of its proper government. We have heard of the great charities of New York. I pay my willing tribute to them. We have heard from the gentleman from Herkimer [Mr. Graves] of the churches of New York. I pay my willing tribute to them. We have heard from the gentleman from New York [Mr. A. R. Lawrence] of the high character of many thousands of the citizens of that city. I pay my willing tribute to it and them all. I live at present on Staten Island, a suburb of the city, but my home for many years has been in the city itself, and I know what the city of New York is. Like the gentleman from New York [Mr. A. R. Lawrence], I will assume to speak for it. Sir, it is not the fact that a man is born in the city, it is that he has lived in it, that he has looked at it, that he has thought upon it, which enables him to speak with weight upon any subject which concerns its welfare. The city of New York, by its situation, is the gate of the State; it is the market of the State, and greatly the market of the country. At this moment its warehouses labor and strain with the riches of this State and of the whole country. At this moment the throngs that move up and down its streets of that city are counted by thousands and thousands—strangers and citizens. The city of New York, sir, is, of all places, in its interests, the least local; it is, of all cities, the one in which those who do not live there have the profoundest interest. The city of New York alone, of all cities in this country, is the one that bears the most vital relation to the State of which it is the metropolis. Now, of the population of the city of New York we have already had some details. During the last year, there came to this country more than two hundred and thirty-three thousand foreign immigrants. By the most approved statistics of the most thoughtful and careful European authorities, the

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constant annual immigration from Germany is in the ratio of one to every five hundred and thirty-three of the inhabitants. In Ireland, where, by the last computation, there were less than a million of persons engaged in agriculture, the constant, steady annual rate of emigration is in the ratio of one in every forty-four persons. This vast flood of emigration launches itself chiefly upon the city of New York. In the year 1866, there were about two hundred and twenty or two hundred and twenty-five thousand persons who came as emigrants to this country. Nearly one-half of this number remain in the State of New York, and the very worst part, not in every detail, not in every particular, not in every individual instance, but the very worst part of that vast immigration from Europe every year settles in and about the city of New York. Is this a fact of no interest? Is this a fact which has no bearing upon the discussion in which we are engaged? Is this a fact which ought to have no influence upon the people when they come to consider whether the fundamental functions of government shall be delegated entirely by the people of the State to the people living in the city? I say, sir, that of this vast number of immigrants that come to this country, the largest and the worst part remains in that city. And what do we naturally find? We find that three-fifths of the voting population in the city is foreign. We find that in some political districts of the city the percentage of the native population is strikingly and almost incredibly small. Are these facts of no importance? Sir, they derive their importance from one consideration—but it is not that this mass of voters is foreign. Mr. Chairman, I can certainly have no hostility to foreigners, as such. In a sense we are all foreigners upon this soil. It is not three centuries since the father of the longest settled family in the country came from other shores. In the broad, general sense, we are all foreigners; but in the specific, political sense which I intend, the fact is this, that the great mass of immigration which comes to the city of New York, exceptional in its amount, depositing itself within that city, necessarily creates a voting population unfamiliar, many of them, with our language, totally unfamiliar, most of them, with our institutions or their spirit, and the necessary prey of demagogues. It is moreover a densely ignorant population, and often a very criminal population. It is therefore upon the plainest principles a population to be very carefully scrutinized before the great functions of the defense of liberty and of right are unreservedly committed to them. Why, sir, a friend of mine who has busied himself with the greatest curiosity and interest in these researches, informs me that he finds that during the last year there were arrests in the city of New York, criminal arrests, to the number of fifty thousand, or more; and, sir, allowing for re-arrests and for aliens, it is undoubtedly fair to presume that of the fifty thousand persons so arrested at least forty thousand were voters in the city of New York. How many of these forty thousand ought we to believe, in any just view of government, fairly fit to be intrusted with the protection of the rights and liberties of the citizens without control of the whole people?

Mr. HUTCHINS—I wish to say to the gentleman from Richmond [Mr. Curtis] that my researches have shown that there have been over forty-nine thousand arrests of male citizens over twenty years of age in New York during the last year.

Mr. SCHUMAKER—Does the gentleman mean to say that so many separate individuals have been arrested, or does that number include the individuals who have been arrested and re-arrested and re-arrested over and over again?

Mr. CURTIS—If the gentleman from Kings [Mr. Schumaker] had noticed my statement, he would have seen that I made a deduction for re-arrests and aliens. It appears from what the gentleman from New York [Mr. Hutchins] says, that my statement may be made still stronger and more precise, and that there were actually about forty-nine thousand criminal arrests of male persons over the age of twenty-one years in the city of New York during the last year, and, making the deductions which are claimed by the gentleman from Kings [Mr. Schumaker]—if you take forty thousand, which is undoubtedly a fair estimate—it is undeniable that you have, out of those persons arrested during the last year, forty thousand probable voters of the city of New York, in which there are about one hundred and twenty-three thousand registered voters. Now, sir, I ask this Convention whether they are willing to propose that the people, who alone have the power, should delegate so large a part of their supreme authority to a population of which a fact like the one that I mention can be undeniably affirmed? If I am told that this is an invasion of the democratic theory, I reject the assertion entirely. The democratic theory does not say that Cherry street will govern itself well. The democratic theory, properly interpreted, does not say that Sing Sing and Blackwell's Island will govern themselves wisely. Sir, let me not be misrepresented. I trust I shall not be understood as saying that the city of New York is Sing Sing or Blackwell's Island. I trust I shall not be understood as saying any more than I do say, that an enormous amount of the floating foreign population in the city of New York, necessarily ignorant in every respect—ignorant of our institutions, ignorant of our language, ignorant even of reading and writing, necessarily wanting every thing that makes an effective American citizen—necessarily makes that city exceptional; and therefore the people of the State should very carefully consider how much of their power shall be unreservedly delegated to the city. Mr. Chairman, experience proves the necessity of this hesitation. Reflection suggests that where you have a city so exceptionally constituted, you will presently find that the system of local government, in the breadth which is claimed for it here, will necessarily fail. What is the lesson of experience? It will soon be forty years since the system of electing the mayor in the city of New York was introduced. Up to that time the delegation of power was made by the sovereignty of the State by appointing the mayor. But the system was changed, and what was the result? Why, sir, after thirty years of the experiment of complete local government in that community the exper-

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iment was discovered to be a failure. I speak upon the authority of my honorable friend from Richmond [Mr. E. Brooks], who was then, it appears, a Senator from the city of New York, and who says that there was such dissatisfaction in the city that by common consent the men of all parties met in huge assemblages, and a cry for aid went up from the people of the city to the great body of the people of the State, that they would come down and help them out of the condition into which they had fallen. That, sir, was the origin of the commission system. It had not, as is claimed, a strictly party origin. The gentleman from Richmond [Mr. E. Brooks] expressly denied that it was a party movement; and even if my friend from New York [Mr. A. R. Lawrence] had been able to substantiate his assertion, even if any gentleman upon this floor could prove that the police commission, which was the first introduction of the State power, was merely a political movement, to every political thinker and observer what is the necessary inference? This only, that the condition of the city of New York was such, the danger to life and property was so imminent, that skillful political engineers in the State, looking about to find something upon which they could base their policy, and knowing that no political policy can ever be securely founded unless it starts with a fact, seized this indisputable fact gladly, and upon it made their claim and based their policy. Do you suppose, Mr. Chairman, that it would have been possible to carry such a proposition as that of the metropolitan police, if the movers had not been able to show that the existing state of things demanded a change? Unquestionably, sir, the condition of the city did demand a change. I appeal to the intelligent public opinion of New York, I appeal to the intelligent memory of every man familiar with the state of that city at that time, to support the assertion of the gentleman from Richmond [Mr. E. Brooks] that it was a cry for relief proceeding from the best citizens of that city, irrespective of party, which was the occasion of the creation of the police commission, and that the condition then existing was the result of thirty years of the experiment of local government among an exceptional population.

Mr. LIVINGSTON—Will the gentleman from Richmond permit me to ask him a question?

Mr. CURTIS—Certainly.

Mr. LIVINGSTON—I would like to ask what was the necessity that required that the majority of the commission should be made up of republican members?

Mr. CURTIS—I am speaking of the principle, not of the political aspects of the case. I am speaking of the principle of State supervision in a particular section of the State over the rights of property and of persons. Having proceeded so far, and having reached, in the interests of all parties and at the demand of all parties in that city, this exercise of the undoubted authority of the people of the State, the next practical question with which we have to deal is, how has this intervention of State authority resulted in the city of New York? In other words, is there reason in the experience of that action to deplore this particular exercise of the unquestionable power of the people, and to return, not to the previous condition, but to such a system as is suggested in the report of the majority of the committee, and which is, under the circumstances of the case, wholly unprecedented? Now, how has the present system worked? The chief commissions in the city of New York are the Central park commission, the fire department commission, the board of health, and the police commission. These are the special boards at which the fierce shafts of opposition are hurled here and elsewhere. Let us take for this examination the year 1866. The gentleman from New York [Mr. Hutchins], who occupied the floor yesterday morning, gave us some striking statistics of the year 1867. Let me very briefly and simply recount to the committee, they bearing in mind the necessary intention of the citation, a few facts in regard to the year 1866. The tax levy for that year as stated by the mayor in his annual message in January, 1867, was about $17,000,000. How much of this money was under the control of these commissions? Under the control of the Central park commission, and disbursed by them, was the sum of $340,000. Under the control of the fire department, and disbursed by them, were $870,000. These are round numbers. Under the control of the health board, and disbursed by them, were about $225,000; and subject to the control of the police commission were about $2,270,000. The largest part of this money, as you will see, was disbursed by the board of metropolitan police, and the great bulk of the expenditure was for the salaries of the officers and men. At that time in the board there were sixteen surgeons, whose duty is most essential and important, whose salaries were $2,250 each. There were thirty-four captains, whose salaries were $2,000 each. There were 180 sergeants, whose salaries were $1,600 each. There were 1,844 patrolmen, whose salaries were $1,200 each; and there were seventy-three doormen, at salaries of $900 each. I think, sir, that there were never salaries paid in this State that were better earned than those paid to the men of the metropolitan police of New York. Against this sum of $2,270,000 we will put the further fact, also familiar to the committee and worth while to remember at this point, that the police commission of New York is the arm of the excise board, and that during this last year, not the year I am considering, but last year, 1867, they have in that way realized for the revenues the sum of $1,200,000 as against $12,000 the previous year. Such being the expenses of the chief commission, Mr. Chairman, the questions are, first: Are there too many men employed? And second: Is the pay too large? The ratio of the police in the city of New York is the ratio of the police in Paris and London and in every great city. It is one to about every five hundred inhabitants, and in New York it is one to every five hundred of the inhabitants, without a standing army behind it, which is the support of the foreign police. Is the pay too large? I am sure there is no gentleman, whatever his views of the necessity or wisdom of this police commission, who will say that the pay of any of

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the various men employed by it is extravagant. Again, sir, is there any tangible charge of extravagance, carelessness or fraud in the management of this fund? If so, I have not yet heard it. There is a vague assertion that the board is used for partisan purposes; but I am speaking now of the money of the State expended by this commission; and I ask, is there any tangible charge of fraud, carelessness or extravagance? Sir, the metropolitan police system is unquestionably what Mayor Hoffman, in the letter cited by the gentleman from New York [Mr. Hutchins], declared it to be "as nearly perfect as any system in the world." My friend [Mr. Lawrence] says the mayor wrote that letter at a time when there happened to be one or two democrats in the board. But, sir, the police system is the same. Whether administered by a democratic board or by a board composed wholly of another party, the system is still the same; and the honorable mayor of New York called it "as nearly perfect as any system in the world." Well, is there any complaint of the other commissions—of the other methods by which the people of the State have chosen to exercise their authority in the management of the affairs of the city of New York? We will take the fire board, as it is called. The Convention is aware that upon our tables has been laid the petition of the fire insurance companies of New York, almost without exception, asking for the continuance of that board. As trustworthy testimony in regard to the actual working of that board, I ask what is the loose rhetoric and vague declamation of gentlemen upon this floor compared with this petition of the fire insurance companies of the city, almost without exception? So, sir, in regard to the sanitary board. In the year 1866 that board cost the State $225,000—the sanitary board which kept pestilence at bay and held back death from the homes of this great State. It seems to me not an extravagant price to pay. And as all the fire insurance companies ask for the continuance of the fire board, so all the life insurance companies ask for the continuance of the board of health. This is one of those facts which are of themselves the most eloquent and conclusive arguments. As to the police board, I suppose there are very few tax payers and property owners in the city who, if they knew that this Convention had abolished the metropolitan police board, and that the act of the Convention was final, and that the police control which has been exercised over that city for the last ten years was now to be withdrawn—would not at once feel that their property had diminished in value; and I myself know of manufactories in that city the proprietors of which declare their intention, if this kind of control be withdrawn, to move over the line into other States. Mr. Chairman, I proceed to another point in regard to the police, which the gentleman from New York [Mr. A. R Lawrence] was pleased to call the great police commission. Three times he used the word "great" sneeringly, in connection with the police department of New York, and not wisely as it seemed to me. We have had much reference to the famous riots in the city of New York in 1863. I am now going to say a word about those riots. I am going to show, if I can, to the people of the State of New York, through their representatives upon this floor, what is here proposed in regard to the protection of lives and property of the people of the city of New York. The riot began on Monday, July 13th, and lasted until Friday of that week. The military force of the city and of the State was absent in the field. It was one of the dark hours which, during the long and terrible war, obscured for a moment the hearts of good and true men everywhere. It was a time when the very final test was to be applied in the city of New York to the patriotism of that city and of the State. It was known, sir (despite the scepticism that has been expressed in the committee by some advocates of the report) it was previously known that trouble was imminent. It would, indeed, be a very imperfect police management in a great city which was unable to forefeel the movements of the mob spirit at such a time. It was known that disturbances were coming. It was known, precisely as it was known last spring, that grave disturbances were imminent from another cause. And, sir, I pause to quote again from Mr. Hoffman, the present mayor of the city of New York, a quotation from a speech made by him just previous to his late election, when he was soliciting the votes of his fellow-citizens, and I make it as an additional proof of the character of the population of that city, of its character as known to those who are highest in position in the party which is now in the majority in that city. Mr. Hoffman says, speaking of a certain occasion last spring, that by a "turn of his hand" there would have been a fearful mob excited in the city of New York. Sir, I respect, and I desire publicly to express my respect, worthless though it be in his estimation, for the officer who refused to give that turn of his hand, and who stood up before the people and said that he had done so. Well, sir, this being the character of these people, a people so susceptible, by the confession of the mayor of New York, that by a mere turn of his hand he could have produced a fearful riot among them last spring, it is easy to understand what the situation was at the time of the great riot. Fortunately, Mr. Chairman, we had at that time a mayor whose hand is turned always toward intelligent order; but all the military of the State were absent, and the riot began. The police had taken their measures. They had secured the arsenals, they had done what they could to save the city. You will remember, sir, that the population of the city of New York is nearly a million in number, and you will remember that the worst part of the population had not gone to the war, but remained in the city, and knew that the military were absent. Sir, I desire you also to remember that the police force that was left in that city was scarcely more than two thousand men. Well, the onset came. From every quarter of the city the lurking and dangerous population was at once revealed. It sprang to life in every corner. It appeared to have an organization. Sir, it had the organization of a common hatred and a common treason. It had the organization which bad men have everywhere. And for nearly a whole day, despite the efforts of the police, those riot-

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ers in the city of New York did virtually hold that city by terror. The riot began on Monday morning, and the military from the neighborhood arrived on Tuesday afternoon, as Gen. Brown says, as allies to the gallant police. Yet, for three days business was generally suspended, and the rioters raged through the streets. I will not recount the horrors of that time. The gentleman from New York [Mr. Hutchins] recited to us some of them; but there are facts which have never been printed, there are incidents known to me, at which the heart of the bravest man would almost stand still, and his tongue refuse speech. It was not only a riot—the gentleman from Montgomery [Mr. Baker] is correct, though his argument has not the bearing that he seems to suppose—not merely a riot, it was a movement of the rebellion. While brave and loyal men elsewhere, stood fronting the foe in the field, there in the streets of New York, in little squads of three or four hundred, that intrepid regiment of two thousand men, the great left wing of the army that stood braced against the rebellion, were also fighting the same great battle, but in a thousand-fold more ghastly form. The police of New York were on that day the army of the nation in the streets of the city, protecting you, every one of you, protecting the State every inch of it; protecting, as I believe, sir, the United States from a counter revolution that was ready to spring from that tremendous riot in the city of New York. Nor is there any regiment that has returned with its honorable banners torn in the battle-field, which deserves more lasting honor in the history of this country, than that brave band of two thousand men, of every faith, of every party, who stood firm in the city of New York, breasting bloody rebellion, and sealing the victory that was won at Gettysburg. Mr. Chairman, my friend from Montgomery [Mr. Baker] says that after all it was only an episode of the rebellion, after all it was a sporadic phenomenon of the great civil war. Sir, he will pardon me. It was undoubtedly an episode of the rebellion, but it was an appalling episode, because of the peculiar character of the city. There were thousands of true men and women in New York who gave freely to support the war—sending regiment after regiment to the field. But it is undoubtedly true, nor will any gentleman deny it, that the city had a vast population, ready and eager at any moment to do what could be done to withstand the progress of the national arms, and to defeat the national victory. Now, sir, if the arrangement provided in the report of the majority of the Committee on Cities, had existed at that time, what would have been the situation in the city of New York? And, sir, under that arrangement, if it be adopted, what will always be the situation when any similar emergency shall arise hereafter? Simply this, sir, that the mayor, for three years, as proposed, the supreme head of the city government, the mayor, appointing every officer in the departments under him, the mayor appointing every policeman, who will be in that case what the honorable gentleman from Brooklyn [Mr. Murphy] truly declared he would be, a member of the mayor's body guard—the mayor with his police dependent upon the votes of this kind of population, yielding to the same instinct which made the supreme executive of the State, confronting those red-handed rioters address them as "my friends," instead of addressing them as the armed and fiery embodiment of the authority of the laws of the people of New York—the mayor will inevitably do what? Sir, I do not hesitate to say that, with a city government modeled upon the principles which are laid down in the article reported by the majority of this committee, the Sixth regiment of Massachusetts would not have reached Baltimore before it met its first fierce ordeal; but, in the city of New York, marching down Broadway, it would have encountered its first battle in the great war for Freedom and Union. And so it will be again. The gentleman from Montgomery [Mr. Baker] says that that riot was merely a sporadic phenomenon of the rebellion. So it was; but always a population of the exceptional character of so much of that of the city of New York, instinctively sympathizes with lawlessness. As it would have been then, sir, so would it be again. Nor this alone. I have not yet done with the riots of 1863. While those riots were at their deadliest and worst, while the most outraged and forsaken of the inhabitants of this State, or of any country in the world, were being dragged through the streets, were being burned and torn asunder, stoned, and shot, and hung, while the mad fury of this riot caused the city of New York to rock and reel with terror, there were organs of public opinion in that city—I do not speak of parties—there were organs of public opinion doing all they could to excuse and palliate, and thereby to foment and stimulate these fearful massacres.

Mr. E. BROOKS—Will my friend [Mr. Curtis] be pleased to name some of those organs of public opinion?

Mr. CURTIS—I will do so. The newspaper known as the *Herald* called the rioters "the people;" the newspaper known as the *World* called the rioters "the laboring population;" the paper known as the *Evening Express* called them "enraged and outraged conscripts," and this, sir, while they were plunging the knife into the very hearts of the noblest men, into the very hearts of the most destitute and forlorn human beings in that city.

Mr. E. BROOKS—Will the gentleman yield for a moment?

Mr. CURTIS—Yes, sir.

Mr. E. BROOKS—The gentleman having named those respective journals in this important place and at this important time, I now call upon him, as a fair and just man, to place the text and the context together, that we may see just what was said at that place and time by those journals.

Mr. CURTIS—I am unable to do so at this moment. I have not the context by me.

Mr. E. BROOKS—Then I trust that my colleague will allow me to say, in behalf of one of the journals he has named, that his inference is entirely unfair and untrue.

Mr. CURTIS—If the gentleman will allow me, I should prefer to continue my remarks. At the request of my colleague [Mr. E. Brooks], I have quoted the phrases that were used by those jour-

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nals. I have quoted phrases that were used, I do not say by party organs—I have avoided that expression—but phrases that were used by the organs of a certain public opinion in the city of New York. Sir, the use which I wish to make of the fact is this: that precisely the same public opinion which declared this frightful mob to be a rising of "the people," a rising of "the laboring population," a rising of the "enraged and outraged conscripts," is now the public opinion which, by the same organs, and by its orators upon this floor, asks of the people of the State of New York that they will surrender (for it comes to that under this article) the protection of life and property in that city to the guardianship of those who made or palliated the riots of 1863. I commend this fact to every gentleman in the Convention. It makes no difference as to that fact, whether those riots were parts of the rebellion or whether they were not. If such things are done in a great crisis like that, what would be done in a lesser crisis? If, when the struggle is for the very salvation of the government of the country, these men would not hesitate to take this position and say these things, what would they not be willing to do when it was a mere riot perhaps for the purpose of "clearing out" a few negroes in a back street? I put it to you, sir, and to this Convention, that these gentlemen, with this record, have placed themselves beyond the right fairly to demand that the government of the city of New York shall be given up to that kind of public opinion. Mr. Chairman, I am aware that there are lower considerations which have been introduced into this discussion; I am aware that my friend from Onondaga [Mr. Alvord], with whom I believe I have proceeded harmoniously since this Convention began its sessions, except upon one occasion, and then, sir, the exception was a mere slight difference of opinion, and not, as he seemed to think, a graver difference—I am aware that he has told us, and that my friend from Albany [Mr. Harris] has told us, and that the gentleman from Onondaga [Mr. Comstock], of another party, who, I am sorry to see, is not now in his seat, has told us that it would be an unwise party measure for this Convention to adopt any other than the article recommended by the chairman of the Committee on Cities. Now, I do not intend to drag any political discussion into this committee. If there be an arena in the State in which ordinary party quarrels should be hushed, it is a Constitutional Convention. If there be a place in the country where great political principles should assert themselves, where all decisions should be reached only by the most liberal, the most careful, and the most prudent thought, it is a Constitutional Convention. But, sir, I will say to my friend from Onondaga [Mr. Alvord], as I will say to any gentleman with whom I have been accustomed to vote when party questions are involved, that the principles of the party with which I act, are as dear to me as they can be to any member of it. The principles of that party, in my judgment, are those by which alone the permanent freedom and prosperity of this country can be secured. They are those truly democratic principles which my friend from New York [Mr. A. R. Lawrence] fondly asserted to be his own, an assertion which he instantly corrected when he remembered that he was a partisan. Declaring as a man that the true democratic doctrine required that all the people of this State should be the source of political power upon equal terms, he corrected himself by saying that all the white people of this State should be the source of political power. While he spoke, as I will believe, his unbiased thought, his speech was as serious as I believe his heart to be; but when he remembered party, the advocate of equal rights became the special pleader of the caste of his color and the aristocracy of his race. Mr. Chairman, my friend, if he will permit me to say so, belongs to the "white democracy." [Laughter.] I, sir, God helping me, belong to the great democracy of man, the democracy of humanity. He, if he chooses, as honestly, fairly and justly as he may, will urge what he believes to be his democracy upon the support of the people of the State and the country. I believe that there will be no peace in the land, that it will rock to and fro with the most violent agitation, until the true democracy of man prevails, and the equal rights for which he contended with his lips shall be the law of the heart of the land. I say that the principles of my party are as dear to me as they can be to any man; I say to my friend from Onondaga [Mr. Alvord] that, long a disciple of that party, long following illustrious leaders, I have moved on as well as I could toward that great consummation. That the policy of the nation, under the control of that party, and that of the State, should be the most absolute security of every right of life and liberty to every citizen in the land. That, sir, is the chief principle of the party which I have followed, and to which I belong. All the policies which that party may adopt, which shall secure justly, legally and fairly that result, are the policies which as a party man I support. And because I believe that the measures recommended by the chairman of the committee [Mr. Harris] necessarily imperil that result, I diverge from my friend, and if my party chooses to march on in what I conceive to be a mistaken policy, in what reason and experience prove to be mistaken, then I shall have to diverge from that party, as it seems upon this point I am to diverge from my friend from Onondaga [Mr. Alvord]. Nor, should another consideration which has been urged in this debate, be of the least influence. I have heard it said privately, and asserted publicly, that it was necessary that the city of New York should be remanded to itself, that there was no other remedy, that the extremity was so supreme, so absolute, that now the city must be delivered over to itself, because there was no way to peace except through a vigilance committee, in other words, except through anarchy and revolution. Sir, I do not believe it, and whether I believe it or not I agree with the statesman who warned us not to praise revolutions, for they are at all honorable cost to be avoided. Let no man think that this knot is to be cut by the sword of revolution. Let no man think that the only way to peace and good government for the city of New York lies through the fearful precedent that we beheld in

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July, 1863. No, sir; it is we, sitting here as statesmen; it is we, sitting here as primal legislators, who are to take care that the city, lying under the awful menace of blood, the city of which we have the rightful care, shall receive the utmost benefit of that care. And I appeal to you, Mr. Chairman, I appeal to my friends upon this floor, and through them I appeal to the great people of the State of New York, that this may be done. I speak for those who did not extenuate, who did not palliate; I speak for those who do not say as my friend from Richmond [Mr. E. Brooks] said the other night (language which I took down at the time), that there was "provocation" of those massacres; I speak, sir, for the minority in that city now, for the minority in that city always, for the most forlorn, the most outraged, the most oppressed, against whom the wild fury of such a population as that of New York will in any excitement always be directed. Their hope is in the people of this State. By my lips, at this moment, they ask this Convention not to tie up the hands of the people of the State, not to abdicate the authority of the people, not to build a wall between that part of the State and the rest of the people. They ask humbly that this Convention will now retain in the hands of all the people that authority which is theirs by the theory and practice of our institutions, that authority which they are bound to exercise wisely, that authority which they throw away if they adopt the article reported by the chairman of the committee.

Mr. DALY—Mr. Chairman—

Mr. DEVELIN—Will the gentleman [Mr. Daly] yield to me a moment?

Mr. DALY—Yes, sir.

Mr. DEVELIN—Mr. Chairman—

The CHAIRMAN—The gentleman from New York [Mr. Develin] has already spoken once upon this subject. The gentleman from New York [Mr. Daly], who first addressed the Chair, has the floor.

Mr. DEVELIN—He gives way to me for a moment. The democracy of the gentleman from Richmond—

Mr. C. C. DWIGHT—I rise to a point of order.

The CHAIRMAN—The gentleman will state his point of order.

Mr. C. C. DWIGHT—It is that the gentleman from New York [Mr. Develin] cannot speak a second time upon this question when other gentlemen desire the floor.

Mr. DEVELIN—I have not spoken upon this question; I have only asked a question.

The CHAIRMAN—The gentleman from New York [Mr. Develin] cannot speak a second time under the rule.

Mr. DEVELIN—It is a question of fact. I have not yet spoken upon this question.

The CHAIRMAN—The Chair understands that the gentleman from New York [Mr. Develin] followed the gentleman from Broome [Mr. Hand].

Mr. DEVELIN—Not to discuss the question at all—merely to make an explanation.

Mr. C. C. DWIGHT—I insist upon the point of order

Mr. DEVELIN—But it is a question of fact whether I have spoken upon this matter or not.

The CHAIRMAN—The Chair understands that the gentleman from New York [Mr. Develin] has already spoken once upon this question.

Mr. DEVELIN—Then I yield to the decision of the Chair.

Mr. DALY—Mr. Chairman, it was not my intention to have spoken upon this question. I took occasion, during the sitting of the committee, to express my views very fully upon this subject, and being satisfied with the report of the majority of the committee in its general features, I meant to confine what I had to say to one or two provisions in it to which I objected when the sections containing them should come under consideration. But it is impossible, sir, to remain silent after what I have just listened to. It is a duty which I owe to my constituents to see that the gentlemen of this Convention should not be misled by the representations which have been made respecting the great city, which I have the honor to represent and the rights of which they are asked to recognize and fix by provisions to be inserted in the fundamental law. My eloquent friend from New York [Mr. Curtis] with the attractive and persuasive manner which so eminently distinguishes him, and with the full effect of that musical voice of which he is so exquisite a master, especially in the minor key, has raised a cry of lamentation over the city of New York, equaled only by Jeremiah wailing over the desolation of Jerusalem. As my colleague, Mr. Lawrence, said last night, I profess to have some knowledge of the city of New York. I was born in that city, I have passed all my days there, but I do not claim any thing upon that ground, except the opportunity for observation and knowledge which so long a period of time has afforded; and I say from the fullness of that knowledge that I am astounded at the audacity (I use the word in no offensive sense to the gentleman from New York) I say I am astonished at the audacity of the statements made respecting that city; assertions, the boldness of which, are to be accounted for only by that unhesitating confidence which usually accompanies the want of knowledge. The eloquent gentleman [Mr. Curtis] began his discourse with a dissertation upon the nature of civil government, particularly as applied to cities; and he told us that so far as this measure was concerned it was not a question of right, it was not a question of principle, but that it was a question of expediency. When we demand a recognition in the fundamental law of that right of municipal government which has grown out of the experience of two thousand years; which survived the despotism of the Roman empire and the feudal trammels of the middle ages—that burgher liberty for which the free cities and guilds contended against emperors and nobles, we are to be told, in a republican government, that it is not a question of right, that it is not a question of principle; but purely a question of expediency. Why, sir, one-half the wrongs that have been imposed upon society have been introduced and justified under the color of the word 'expediency.' How long, sir, may I ask, must a measure endure before it will ripen into a right and be-

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come a principle. The right of municipal bodies to have the exclusive management of their own affairs has existed for two thousand five hundred years. The Romans, the greatest law givers the world has ever known; the people who have left us the greatest and most systematic body of legal principles, that were ever brought together within the same compass, conceived nothing, carried out nothing, and transmitted nothing more important to posterity than the regulation they established by which separate cities and towns had the right of choosing their own magistrates and of enacting their own laws. They transplanted that political principle to the soil of Britain and from it the Saxon derived their political division of the country into counties, townships and hundreds. It was the germ in fact of that division and distribution of political power, which is the essence of our form of government, and which has proved to be the best security for the protection of the rights of the individual and for the preservation of political liberty. This is one of the great fundamental principles upon which republican government rests and every departure from it is a step toward despotism, for the diverging lines by which political society moves is on the one hand toward liberty and on the other to centralization, aristocracy, monarchy and finally to despotism. I say this, sir, in no demagogical spirit. I am not in the habit of making use of public occasions for such a purpose. I speak of it as the truth and as the teachings of history, and I contend that this principle of republican government has been departed from and violated by the course of legislation in this State in respect to the city of New York for the past ten years, and which is sought to be restrained by the proposed constitutional provision now under consideration. The gentleman from New York, Mr. Chairman, says that, New York is not the property of itself. He has painted a picture of that city. He has described it poetically; he has described it geographically and I neither quarrel with the poetry of his description nor with the accuracy of his geography.

Mr. CURTIS—Will the gentleman allow me to interrupt him for a moment? I would remind him simply that I am technically "the gentleman from Richmond," and not the gentleman from New York. He has spoken of me, I think, as the gentleman from New York, and I think his statement is therefore liable to create confusion.

Mr. DALY—I apologize to the gentleman [Mr. Curtis]. I presume his mistakes are entirely attributable to the circumstance that he is "the gentleman from Richmond." [Laughter.] I referred to the eloquent gentleman from Richmond [Mr. Curtis], but in doing so did not mean to disparage the gentleman from New York [Mr. Hutchins], for he is fully included in my encomium. [Laughter.]

Mr. HUTCHINS—I would state—

Mr. DEVELIN—I rise to a point of order. The gentleman from New York [Mr. Hutchins] has already spoken once.

The CHAIRMAN—The Chair will hear what the gentleman proposes to say, in order that it may decide whether the gentleman [Mr. Hutchins] is in order or not.

Mr. DEVELIN—My point of order is that the gentleman has no right to speak at all having already spoken on this question.

Mr. HUTCHINS—I would say that I apologize to the gentleman—

Mr. DEVELIN—I r ise to a point of order. The gentleman has already spoken on this question.

The CHAIRMAN—The Chair holds that the gentleman from New York [Mr. Hutchins] is not speaking upon the question.

Mr. DEVELIN—If he is not speaking on the question, I suppose I may be allowed to speak again if I do not speak on the pending question. [Laughter.]

Mr. HUTCHINS—I would ask my friend wherein we differ—

Mr. DEVELIN—I rise to a question or order.

The CHAIRMAN—The gentleman from New York [Mr. Hutchins] is in order.

Mr. DEVELIN—Then I hope I will be in order when I ask an opportunity to speak again.

Mr. HUTCHINS—I would ask my friend wherein we differ in our argument, when he bases his upon the assertion that the Roman code provided that municipal governments should control in all local matters, and the State only in those matters in which the whole people are interested?

Mr. DALY—I proposed to answer the gentleman as I went along. I was about opening that branch of the subject, and shall approach it immediately. Whether I answer it or not is a matter that will be determined by the gentlemen present. I presume I shall not answer it satisfactorily to the gentleman from New York. My eloquent friend from Richmond [Mr. Curtis], whom I have now located in a region which may excuse the obscurity of his vision respecting the city of New York [laughter], says that New York is merely the gateway of the State, and that it holds that relation to the State and to the nation, that it has no right to consider any thing exclusive in itself, if the common interests of the State and of the nation are otherwise; that as a great commercial emporium, and a great seaport town, the State and the nation have a right, and it is proper that they should have a right, in its control and management. I do not mean to say, Mr. Chairman, as an integral part of this country, that the city of New York is not a part of the nation, and in the same general sense a part of the State; but it does not follow from this that the management of its local affairs, that all the details of its local government are to be left to the State or to the nation. If the rule of departure is justifiable it cannot be confined to the State, but may extend to the general government, for that is the natural tendency and the logical result of the policy of centralization. Mr. Chairman, when this colony was established, there had arisen in Europe, in the great struggle for municipal liberty (for the history of municipal corporations is the history of political liberty), a practice of granting in a charter, as a special privilege, and not as a right, certain franchises or political liberties to the inhabitants of particular cities or towns. Those charters were obtained by various means, sometimes by force, sometimes by persuasion, sometimes by money, sometimes by that

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which the gentleman has referred to, political expediency; but whenever, or wherever, or however obtained, they were wrested from the hand of power, taken out of the grasp of some feudal baron or sovereign, and preserved as to title or evidence of the right of the municipality to the privilege granted. When the city of New York passed from its Dutch rulers and came under the government of England, one of the first acts of its earliest governors was to grant one of these peculiar privileges or charters. I call it the grant of a privilege and not the recognition of a right, and therefore, under the Dongan charter and Montgomery charter, to which the gentleman has referred, the city of New York merely had the privileges or franchises which it conferred—she never had the right of municipal government. It depended upon that parchment, and it depended upon that parchment alone. But after the establishment of a republican government in the land, after the overthrow of the colonial power of Great Britain, after the destruction of every vestige of kingly government, and the institution of a republican government, this right of particular localities, whether agricultural or urban, formed into counties, confederated in towns, or aggregated in cities; to govern themselves in matters purely local; whether embodied in charters, expressed in laws or fixed in Constitutions, became a political principle, both in this State and in this country, by its general recognition and wide adoption, and what we ask in respect to the city of New York, is a clear and exact recognition of the principle in the Constitution about to be framed. The gentleman from Richmond asks the question "What is the city of New York?" It is a very comprehensive question, and especially when asked by a gentleman who has lived as long as he has in that city, and a question which he has himself but indifferently answered. He has begun by stating that it is an exceptional city. He lays down this as his fundamental proposition. And if he is right in this, then his conclusion follows that, being an exceptional city, differing from all other cities under our republican form of government, and differing, as I assume he supposes, from all the other cities of the world, a course of policy is necessary for it that would not be justifiable for any other city. Now, in what respect has he proved this? He says it differs first in this, that a larger number of immigrants coming to our shores, come to that city than to any other in the country. That is true. The great tide of immigration, the great movement of mankind westward which first began on the high plateaus of Central Asia, and which still continues, to be checked only by the Rocky mountains or the waters of the Pacific, comes first to the city of New York and is from there distributed over the vast expanse of our country. It is true that those chiefly coming from the Eastern Hemisphere have their first resting place in the city of New York. But what is the next fact stated by the gentleman? It is that the larger and worst portion of this immigration remains in the city of New York. He asserts the fact. I deny it. My denial is as good as his assertion, and I put him to the proof by statistics. He then proceeds to say that the largest and worst portion of this immigration, which comes to and remains in the city of New York, is intensely ignorant and criminal. I deny it; and as I said before, my denial is as good as his assertion. I have, Mr. Chairman, to give weight and force to my denial, what the gentleman evidently has not, some sympathy with, and some knowledge of the class to whom he applies the epithets "ignorant and criminal"—a knowledge, sir, not of to-day, but which has extended over my whole life, for if there is any thing, now that I have passed the meridian of life, that is a source of satisfaction to me, it is that I have kept up my association with, my interest in, and my sympathy with, the humble class from which I sprung. I therefore profess, Mr. Chairman, to know something of the people who have immigrated to and settled in the city of New York; and allow me, as the child of two of them, to tell the gentleman from Richmond that, in their unpretending virtues, laborious lives, and honest purposes, they have contributed more to the advance, prosperity and greatness of New York than the cultivated and refined, to whom the gentleman probably thinks the government of that city should be committed. I profess, moreover, Mr. Chairman, to know something of the statistics of great cities, and I make the assertion that the city of New York, whether compared in respect to the ignorance or the criminality of its population, is not, in proportion to its numbers, below the standard of any other city in the world. I do not speak of the cities of Asia, about which I have no particular information; but I do say, when compared with any of the great cities of Europe, London or Paris, or, to take a closer comparison, the industrious and commercial city of Glasgow, and the city of New York, if we take as a test that general intelligence and orderly conduct of its people, the number of children who attend school, the number of persons that can read and write, or any other test, is upon an equality, if it be not above the standard of any of the cities named. Mr. Chairman, the gentleman in commenting upon the exceptional character of the city of New York spoke of it as admirably adapted for commerce. He referred to the two rivers on either side of it, to its picturesque position, and, in his glowing eulogy, outdid, in the enumeration of its marvelous advantages, the Biblical description of Tyre. Did it occur to the gentleman that there was something else besides its natural advantages, which had led to its rise and extraordinary prosperity? Has he taken into account how its interests have been advanced and its wealth increased by the tide of immigration, which for the last half century has flowed to this country, and which is the secret of our rapid and unexampled development? It was a remark of Bacon that that people were the most enlightened, and destined to make the greatest advance in civilization, who did the most to encourage the people of other nations to settle amongst them; and we are a signal proof of the sagacity and wisdom of the observation. It is these immigrants, the residuum of whose vice and ignorance is deposited, according to the gentleman, in the city of New York, that have made that city and the county what it is. Why, sir, what is the history of this country? It is but the his-

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tory of immigration, from the first vessel that landed at Jamestown or Plymouth or the last ship-load of immigrants that came from Belgium or Ireland—a movement which began with the discovery and settlement of this country, which has steadily gone on and will end only with its full and final occupation. It is only narrow minds or little minds that cannot see this, and which carp at and dwell upon the injurious influence exercised upon our institutions by the immigrant and the stranger. The gentleman, if I rightly understand him, regarded immigration, in itself, as, upon the whole, beneficial to the country, but the drawback upon it, in his estimation, was the residuum of ignorance and vice which concentrated by reason of it in the city of New York; it was that which in his estimation, made it, an exceptional city, substantially a foreign city, subject to all the vices and ignorances of the class of persons who came to and had control there. I will answer the gentleman by the simple statistical statement that it appears by the last census that in the city of New York the native outnumbers the foreign population; that the majority of its inhabitants are not foreigners but native born, and this I submit is an ample answer to the charge of the foreign character of the city and to the insinuation that it is ruled or controlled by foreigners. The gentleman from Richmond [Mr. Curtis], relying upon the statement of the gentleman from New York [Mr. Hutchins], that there are forty thousand arrests made in the city of New York of persons over the age of twenty-one years, assumes as a conclusion that those persons are all voters—that is if I understood him correctly—that these forty thousand criminals are all voters. Sir, we have a registration annually of all the voters of the city of New York. I do not pretend to remember exactly the number registered, but it is my impression, confirmed by inquiry of a gentleman present, that the number does not exceed one hundred and thirty thousand, and of this number the gentleman would convey the idea that forty thousand are criminals! I am glad that the gentleman resides in the county of Richmond; for, though not very remote from the city of New York, that circumstance may excuse the want of knowledge that warrants the audacity of such an assertion.

Mr. DEVELIN—He resides where they burn hospitals and lay sick people out upon the ground.

Mr. DALY—I am not surprised that my eloquent friend has never represented the city of New York, entertaining such sentiments as he does respecting its inhabitants. I do not think I misrepresent—I certainly do not willingly misstate—the obvious conclusion to be derived from the gentleman's assertion. Now, Mr. Chairman, there are, according to the statistics, eight hundred thousand inhabitants in the city of New York, and, if out of its one hundred and thirty thousand voters, forty thousand of them are criminal, and that ratio is taken as a test of the whole population—the non-voters, the women and the children—why, sir, the city must be worse than the cities of the plain, for the destruction of which God rained down fire and brimstone. Allow me to say, in perfect good feeling, to my friend from Richmond [Mr. Curtis], for he knows I would not say any thing with the intention of being personal, that he belongs to a class who were very prominent about the time of the French Revolution, called *doctrinaires*. The word signifies a person who does not trouble himself much about facts, but who confidently lays down doctrines or conclusions based upon theories or systems which are purely of his own creation. This is the case with the gentleman when he lays it down as a conclusion that one-third of the voters of New York are criminals. I was not present yesterday when the gentleman from New York [Mr. Hutchins] read a letter addressed by me to some gentleman connected with the Senate of Massachusetts, respecting the police of the city of New York. I am sorry I was not present to hear the letter read, because it was written some four or five years ago, and I cannot from my memory now state exactly its contents, and I can give only my general impression, and that impression is this: that I stated that our police force in the city of New York was one of the best of any city in the world. At all events, whether I said that or not, that is what I thought, and that is what I still think. But if the gentleman means to argue that this is attributable solely to the fact of a commission having been established in 1857, by which the police force has been since governed, I beg leave to differ with him. It is a favorite mode of argument to infer from the existence of one thing that another has been the result, and in this way leap to a conclusion; and the gentleman consequently argues that the efficiency and excellence of the police is due entirely to the existence of a board of commissioners. The efficiency of the police, in my judgment, arises from several causes, the first and most important of which is, that the members of the force are appointed during good behavior, a principle which we contended for in respect to the judges when the report of the Committee on the Judiciary was pending. It is the fact that they are not appointed for a certain number of days, or months, or years, and that, whatever they may have been before their appointment, or whatever motive, political or otherwise, may have led to their selection, their continuance in office afterward depends entirely upon their good behavior. That is one of the best features of any police system, and it is a most important one in the city of New York. The next fact is that the police are organized and made efficient by a system of drill and of constant instruction in respect to their duties and are known and distinguished by an official badge and by a uniform; that they do not go about secretly and stealthily in the city, but publicly and openly with the insignia of their office upon their person. And, thirdly, that the discipline to which they are subject gives them the efficiency and power of a military organization when they are required to act collectively in times of public danger. It is instruction, discipline, and the *esprit du corps* of a body of men holding by the tenure of good behavior, that makes them the efficient force they are, and not the fact that the vote of the majority of the members of the Legislature determine who the four gentlemen shall be who as commissioners are to be at the head of the organization.

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The section reported by the committee provides that the mayor of the city shall appoint these commissioners; and I contend that it is more appropriate that this power should be vested in the municipal head of the city than in the members of the Legislature or in the Governor. The causes which I have enumerated, and which led to the efficiency of the police, were in operation before the control of that body by the appointment of commissioners was transferred from the city to the State. One of the most important of the reforms in the system was requiring the policemen to wear uniforms and subjecting them to drill and military discipline, and this was due to the untiring efforts of a public spirited gentleman, James W. Gerard, Esq., who persistently advocated it through the newspapers, at public meetings, and upon all occasions. It met with the greatest opposition, especially on the part of the existing police force. It was contended that the uniform would be a badge of servitude and was inconsistent with the nature and the spirit of our republican institutions. It was a great struggle to obtain it, but through the persevering efforts of the gentleman referred to it was obtained, and it was the first great step to make that force what it is. I say that the efficiency of the police is mainly due to the discipline I have referred to; to the fact that they are clothed in uniform, and above all that they are appointed during good behavior, and also to the fact that it is an organized department, with commissioners at its head whose past labors and efforts I am far from undervaluing; but I ask the gentleman from New York and the gentleman from Richmond [Messrs. Hutchins and Curtis], and I ask any gentleman upon this floor, if it is necessary for the management and efficiency of the police force of the city of New York that the commissioners should be appointed, as they are now, by the members of the Legislature, or as they were formerly, by the Governor? Do the members of the Legislature who reside in different parts of the State, or the Governor who resides here in Albany, know the wants of the people of the city of New York better than those who live there, or are they better able to judge of the fitness of the persons who should be the commissioners of police than the mayor of that city? Obviously, they are not. It is not, therefore, a public but a political reason which has led to the adoption of such a course. What are the facts in regard to these commissions? Not designing to speak, I have not provided myself with the information essential to a full exposition of this subject. I have hurriedly put down, as near as I can recollect, the number of commissions existing in the city of New York. They are twelve in number, and I will repeat them. The police commission, the health commission, the excise commission, the Central park commission, the tax commission, the street cleaning commission, the Broadway pavement commission, the commission of public records, the commission of charities and corrections, and the Croton aqueduct commission, and of these the commission of charities and corrections is the only one appointed by a local authority, the comptroller of the city.

Mr. E. BROOKS—There are several others that the gentleman [Mr. Daly] has not mentioned. There are the commissioners of pilots and the commissioners of emigration.

Mr. DALY—We have always regarded them as State officers.

Mr. E. BROOKS—Then there is the Harlem bridge commission.

Mr. DALY—Yes, I had forgotten that. I will begin with the street cleaning commission. Does the Governor, who is at the center of the State and occasionally comes to the city of New York, know best whom should be put at the head of the department for cleaning of the streets of that city? Does he know better than the mayor of the city, or the people who are there?

Mr. HUTCHINS—The gentleman [Mr. Daly] is in error. The street cleaning commission consisted of the mayor, the corporation counsel and the comptroller. I believe that the gentleman from New York [Mr. Develin], who was corporation counsel at the time the street cleaning commission was appointed, was a member of that commission, and signed a contract for cleaning the streets. The commission was composed entirely of local officers.

Mr. DEVELIN—Mr. Chairman—(Is any body going to call me to order?) [Laughter.] The commission of which the gentleman speaks was composed of the mayor, the comptroller, the corporation counsel and the city inspector. I was corporation counsel at that time.

Mr. HUTCHINS—Did not the gentleman from New York [Mr. Develin], as a member of that commission, join in making a contract for cleaning the streets?

Mr. DEVELIN—No, I did not join in the contract. [Laughter.]

Mr. DALY—The gentleman may be right. I will take it as he states it, but I will substitute in place of the street cleaning commission the audit commission.

Mr. HUTCHINS—I would ask my colleague [Mr. Daly] if he denies the statement of my friend from New York [Mr. Develin]?

Mr. DALY—I admit the correctness of his statement, and I put in place of the street cleaning commission the audit commission which makes the number the same. Now, I do not propose to enter into this matter in detail. I have not been here during the principal part of this debate, and it would be unjust to gentlemen of the Convention to repeat what may have been already said by others. I will therefore simply say that this mode of governing by the establishment of commissions is not in accordance with the principles or past practice of our republican institutions. The fact is, that nearly the whole of the executive part of the municipal government of the city of New York is in the form of commissions organized under special laws, passed by the Legislature, and the persons who are administering these laws are either named in the law or they are appointed by the Governor of the State or appointed by a vote of the Legislature. This is a feature which characterizes the whole system, and I say it is anti-republican. It is opposed to the whole plan of our government, and its inevitable tendency is toward the centralization of political power. It

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is for this reason, whatever may be its present operation or effect, admitting all that is claimed for it, that I am and shall ever be opposed to it. No doubt the majority of the members of this Convention, are of the belief that the political opinions entertained by the bulk of the people of the city of New York are wrong and exceedingly injurious. I do not quarrel with gentlemen who entertain this opinion but simply suggest to them to allow the people of the city of New York the same right of independent judgment that they exercise themselves. Political opinions are subject to mutation and change. Toleration is therefore quite as necessary in politics as in religion, and it is a poor way to convince the people of the city of New York of their political errors, by taking away from them their municipal rights. But toleration is more extolled as a precept than enforced as a practice; and I have no doubt that this conviction that the majority of the people of the city of New York are in a state of political error, induced a belief in the necessity of their being governed by those of opposite political opinions rather than to allow them to govern themselves. That would seem to be the reason, and the chief reason, why the acts creating these numerous commissions were passed, or if their enactment was caused by the belief that by such means the majority of the people of the city of New York might be induced to change their political opinions, the result has shown that it has produced exactly the opposite effect, for the democratic majorities, have steadily increased in the city of New York from year to year and with each increasing commission, so that so far as that remedy was relied upon it has proved to be any thing but an antidote. It has failed and must always fail in its final results, for every violation of a great political principle for a partisan advantage is, as a stroke of political policy, always a mistake. Mr. Chairman, I have a word to say respecting the riots upon which the gentleman from Richmond has commented, and as to the extent which the government of the city of New York, or its people, are answerable for what occurred. I was present at the riots, and saw with emotions never felt before, and which I trust I shall never feel again, many of the scenes which took place. I might say much respecting it were it not that, with the gentleman from Montgomery [Mr. Baker], I consider the subject of the New York riots wholly out of place in this discussion. The gentleman from Richmond [Mr. Curtis] says there is something exceptional in the city of New York. I can with equal appropriateness say that there was something exceptional in these riots. We were in the midst of a civil war, and whatever may have been the cause of the riots in the city of New York, they were bad enough and painful enough, but not worse than riots which have taken place in other cities equally as large and under circumstances equally exciting. The state of feeling which produced them, existed, not merely in the city of New York, but in other parts of the State, and to a greater or less extent in every town and city in the country. The city was left with but limited means to protect itself against such an outbreak. It was left with a small but brave body of police, aided by a single company of United States infantry, and no body of men ever distinguished themselves by greater intrepidity and fidelity in so trying a crisis. There were many causes operating, and one of them which operated very largely in producing the feeling which resulted in the riot, was the inequality in respect to the draft. The law provided that the man who could not pay three hundred dollars for a substitute must go to the army if drafted. I think that did more than any thing else in its effect upon the minds of the working classes, and if I had been a working man at the time, with a wife and several children dependent upon me for support, I will not undertake to judge how I may or would have felt. It was very well for persons like myself to have been patriotic and active in support of the government, having the three hundred dollars to procure a substitute, but I do not set myself up as a judge of those who had it not. Nor is what occurred during the riots to be taken or urged as an argument against the foreign element in the population of the city of New York. That element was not found wanting in the country's hour of peril, and I will submit this satisfactory proof of it. I have been connected with an institution organized from the commencement of the war for the support of the orphans of the brave men who have fallen in defense of the Union. That institution was the first one established in the country. It was established in the city of New York, but has latterly been removed to Deposit in Delaware county. It contains at present one hundred and ninety-seven orphans, a part being half orphans. The result of my own observations as an officer of that institution is that the largest portion of these orphans are the children of foreigners. They are the children of men born in other lands, who came to this country and laid down their lives for the preservation of our institutions. These children have chiefly come from the city of New York, and the fact that about two-thirds of them are the orphans of foreigners may be taken as some evidence of what the foreign element of New York did in the support of the government. I would say, in addition, having seen a great deal of what occurred in the riots, that it appeared to me that the rioters were led by soldiers. I have seen and read enough to enable me to know a soldier by his acts, and I am confident that many of the men who led the riots were soldiers, though whether rebel or Union soldiers I do not know.

Mr. AXTELL—The gentleman, in his remarks, says that, from his observation, he is of the opinion that the rioters were led by soldiers, but whether Union or rebel he does not know. I would ask if any Union soldiers were convicted of having participated in this riot?

Mr. DALY—The question put by the gentleman from Clinton [Mr. Axtell] would imply that there might possibly have been Union soldiers. I said I could not say whether they were rebel or Union soldiers, but that they were soldiers I have no doubt. I have no knowledge which enables me to answer the gentleman's question; but I know that much of the riot which I saw was not a spontaneous movement, but was guided and led by men of military capacity. I know, from

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what I saw, that a mob can be led almost as effectively as a company of soldiers. This was one of the peculiarities of that riot, which made it so disastrous in its consequences and so difficult to suppress. The gentleman referred to the fortunate circumstance of the arrival of two regiments of Union soldiers, as if that was the means by which the riot was first checked; but a more fortunate circumstance than that, at the most fearful period, was the falling of a heavy shower of rain at about two o'clock in the morning, but for the occurrence of which the city might have been the scene of a terrible conflagration. This grateful and penetrating shower calmed the excited multitude and sent many to their homes who would otherwise have continued in their work of destruction. I have now said all I desire to say in reply to the gentleman from Richmond. In conclusion let me urge the gentlemen of the Convention not to be led into an erroneous impression respecting the city of New York by statements that have been made. I bid them remember, in the language with which Junius referred to the city of London, that "the great metropolis is the life blood of the State, coursing from the heart, and infusing itself into every vein and artery of the national constitution." What it asks is to be guarded and protected in those municipal rights enjoyed by every other city in the country. It asks for a constitutional provision which will protect it against the invasion of any political party now or hereafter, which may happen to be in power in the State. There is a deep-seated feeling in the city of New York upon this subject. Those who constitute the political majority there feel that in insisting upon the preservation of their municipal rights they are contending for a great principle. They are not battling for themselves alone. It was well said by the Irish orator, Curran, that, "in the confederated strength and united counsels of great cities, public liberty finds a safeguard that extends itself to the remote inhabitant who never put his foot within its gates;" and this is the case here, for the principle for which they are contending lies at the very foundation of our republican institutions. If their just and reasonable demand is not complied with, then I say to you, gentlemen, this Constitution will never be adopted. I say this not as a threat or as a menace. The fear that a Constitution will be rejected is no reason for putting in it what should not be contained in it. But when the thing asked for is itself right, it is proper to refer to the consequences that will follow from the refusal to recognize and grant it. A member of the majority said to me yesterday, we cannot give up the power of the State over so large and so important a part of it as the city of New York. That is, we must have here at Albany the appointment of the heads of the departments, or commissions, to which have been committed almost the entire control and management of its local affairs. If this is to be the construction, then I say that, not only will the entire vote of the political majority of the city of New York be cast against this Constitution, but all the intelligence, influence and power of that majority will be exerted to secure a similar result throughout the State. We ask for nothing that is unreasonable or unjust. We ask for the permanent recognition of a right as old as the days of Alfred, and one that has been essentially American in its wide operation and effect.

Mr. VAN CAMPEN—I move to strike out "three" and insert "two" in the third line, and to correspondingly insert "two" instead of "three" in that section.

Mr. HARRIS—I hope my friend from Cattaraugus [Mr. Van Campen] will withdraw his motion. It was announced by the gentleman who made the motion now pending, to strike out the first section, that he made it with a view that this should be a test vote; and I hope it will be so regarded by the Convention. It has thus far been discussed as being a test question. There are several amendments which will be proposed to the first section if this motion should not prevail. I am aware that a motion to amend the section has precedence over the motion which is now pending; but I hope no gentleman will insist upon amending the section until this test vote shall be taken. If this vote shall prevail, the whole article goes out; if it should not prevail, then we shall have opportunity and occasion to amend the various sections in the article. I intended to propose, if we should come to that question, several amendments, myself—but I hope no gentleman will interfere with the motion which has been made, and which has been discussed for several days, to strike out the section, but that it will be regarded as a test question.

Mr. VAN CAMPEN—If the motion were now to be taken on striking out this section, I should vote against it. I made the motion upon the assumption that this Convention had decided not to pitch this report out of the window, but take the responsibility which is upon this Convention to perfect and improve the report of that committee in such a manner as would meet the views of this Convention, and pass it. It was with that view that I made the motion; but if the gentleman from Albany [Mr. Harris] desires it, I will withdraw the motion to amend in that regard for the present.

The CHAIRMAN stated the question to be upon the motion of the gentleman from Steuben [Mr. Spencer] to strike out the first section of the article.

Mr. ALVORD—I desire to say, sir, a few words in relation to some of the positions taken by my friend from Richmond [Mr. Curtis] this morning, and in doing so—

Mr. BICKFORD—The gentleman from Onondaga [Mr. Alvord] has spoken on this question once, and if he is to speak again I insist that we shall all have the same opportunity.

The CHAIRMAN—All will have the same opportunity. If any gentleman who has not spoken desires the floor, he is entitled to it.

Mr. ALVORD—I waited for that very purpose, but finding that no one desired to address the committee, rose myself. If any gentleman who has not yet addressed the committee desires to do so now, I trust he will do so, and I will respectfully sit down and wait for him.

The CHAIRMAN—The gentleman will proceed.

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Mr. ALVORD—I wish, in the first place, in the opening of the few remarks which I intend to make at this time, to say to my friend from Richmond [Mr. Curtis], that in his conclusion he has done me and the gentleman from Albany [Mr. Harris] a probably unintentional wrong in undertaking to say that we argue only from the position that expediency necessitates our action in regard to this matter. Now, sir, while I have undertaken to argue this matter, not in the narrow way in which I conceive it certainly has been argued mostly upon the side of the opposition; I have distinctly stated that it is a question of principle with me, and what I have said in reference to the expediency of the measure has been only to add weight to the position which I take in regard to this question as a matter of principle. I, sir, would be the last man upon the floor of this Convention—and I trust my acts, so far as they are concerned, from the commencement of our labors up to this time, show me to be such; I would be the last man on the floor of this Convention to forget principle in the light of expediency. If I believed—as I think the gentleman from Richmond honestly in his heart believes—that this would be a violation of the great principle underlying the republican institutions of our country, I would go hand in hand with him in the position which he has taken, and so eloquently argued upon this floor. But, sir, different with him in the very commencement of the argument, my position being diametrically opposite to his on the question of principle, it is only in that view that I take the position that I occupy; and only with the hope of adding effect to what I say; not as a question of expediency, but showing clearly and conclusively that the departure from right will eventuate in the breaking down of party, that we are proceeding in the wrong course, that we are heaping upon ourselves a load that we cannot bear. In the argument of the gentleman from Richmond [Mr. Curtis], he portrayed to us the great sink of iniquity and crime, the city of New York, collecting together from all parts of this world that which is lowest, and vilest, and most degraded; and as the pot seethed and boiled the better portion of it rather than the scum was thrown off upon the great broad field of the country; and that which was the most vile, the most wicked, the most vicious and the most uncontrolable was left in the city of New York. And following up his eloquence in that regard, he comes down to statistics, and he tells us that forty-nine thousand male persons over the age of twenty-one years in the city of New York were arrested in the year 1866, and that it is fair to presume from that statement that at least forty thousand of them were citizens, and entitled to vote—almost one-third of the entire voting population of the city of New York arrested for the commission of crime. And he argues from that position that it is wrong for us to give them the right of local self-government. I go with him there, sir, that it is wrong, if this be true; for it strikes at the very foundation and root of a republican government. I reiterate now what I said before, that if the argument used by the gentleman from Richmond and others who undertake to curtail the power of this local population to govern themselves, is good for any thing, it should not stop where they stop. It should go to the entire disenfranchisement of the whole population of that city from any power or right to control the destinies of this State, even in the smallest degree. If they have not the ability and the integrity to rightfully perform their duties as local governors of their own locality, they have no right to step up to the polls, and thus assist, through their representatives which they may send up here to Albany, in framing laws to govern me and mine. There is no stopping short, therefore, of a wholesale disenfranchisement of the city of New York, making it a province of the country rather than an integral portion of the people of the State. There is no way of stopping short in this road in which the gentlemen are traveling. We have got to do one of two things. We have got to give up the idea of republican government, and the idea of the equality of man so far as that locality is concerned, or else we have got to give to each and every portion of this State the same rights that we grant to any other portion. Our laws, in other words, have got to be common to the whole people. The laws that govern cities should be equal in their action over all the cities of the land. The laws that govern counties should be the same in all counties and so of the laws that govern villages, and there should be no exception by means of which one portion of the State is placed under the domination and rule of another. There has been a great deal of argument here adduced, and undertaken to be introduced here, among others an argument to the passions and to the prejudices of men, growing out of the riots in 1863. Now, I am not going into an extended history of those riots or their causes, but I ask the gentleman from Richmond to recollect the history of this State for the past few years. There has been an organized riot—aye, a rebellion, sir—in more than one or two or three counties of this State that continues to-day even, whenever the opportunity comes for it to show its head, against the government of the State, in the rural portions of the country—in this county of Albany, in the county of Rensselaer, in Columbia, Delaware, Greene and Ulster. You have had your anti-rent riots again and again and again repeated, and the strong arm of the State, through its military power, has gone to the scene of action and driven for the moment the rioters abroad and scattered them; but when that military force had retired, again the riot has gone on. And within a few days, almost within the sound of the bells that toll at your capital, armed men, sir, resisted the force and the power of the law, plain, clear and explicit, and drove the officers of the law from the position that they should occupy as the conservators of the peace and the protectors of the property of the people of the country. Now, sir, here at least in this infected region, in this population so given to turmoil and trouble and riot, there should be an effective metropolitan police, under the argument of the gentleman from Richmond. We leave that matter, sir, where it has been left always in the past. We have our local officers of justice, who are the executors of the law of the State. They are, under ordinary circumstances, sufficient for the purpose, and as we

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aggregate together individuals in closer contiguity, and as communities become larger in numbers, we increase these executive officers for the purpose of protecting the public peace, taking care of the lives and the property of individuals. We have seen, sir, in the past history of this State, that even with all these precautions in localities where there have not been such great aggregations of people as there are on Manhattan island, that the last resort of the State, the military power of the government, has had to be called upon for the purpose of putting down riot and rebellion. Why, take his own county of Richmond; sir, that county, judging from what he has said upon this floor, standing outside of the city of New York, having a population which could not possibly stay within the purlieus of that infected city, but while they hold their lives in their hands, during the day transacting their business, they could not, let the shades of evening fall before they departed from the city of New York and sought shelter and safety in that spot which was the very haven of their hopes, Staten Island. Does he recollect that there a mob rose up in its might and strength, and notwithstanding the executive power which undertook to control them in that locality, destroyed the property of this State, costing a very large amount of money, and that to this day there has been no remuneration given for that destruction of property in that county of Richmond? And does he not know, sir, that to-day any attempt to establish upon that island any quarantine, by way of protecting the sanitary interests of the people of the State of New York and the city of New York, will meet with an uprising of the whole of that people, regardless of all law or all attempt to restrain them? Sir, arguing from his premises, carrying them out to their correct conclusions, the result must necessarily be as I have undertaken to depict it in what I have heretofore said, that you must have a strong central government here at Albany, a government of power and of force that aggregates to itself all of the power of the people of the State, in order to put down these combinations wherever they may exist in the State, temporarily, a result often occurring under a monarchy or a despotism, or else you have got to let these things work out themselves to their legitimate conclusions. Let me say another thing here. He talks about the people, even in this case he talks about the people of the State of New York governing in this regard, leaving alone the question of principle involved here. Let us bring him right down to the test of this. Will he undertake to say, or any other man upon the floor of this chamber, that the whole democratic vote of the city and county of New York is not against these commissions? I take it that no man will answer to that in any other way than in the affirmative, that they are. Take the aggregate vote of that democratic party in the city and county of New York, overstepping the vote of the republican party in the canvass of last year; and take the aggregate vote—the majority of the people of New York State in the rural districts overstepping the democratic vote; and what does the balance show. The city and county of New York give a larger majority than the aggregate majority by which you have elected seventy-three members of the Assembly in this State. The democratic majority in that city, larger in number than the whole of this, have elected only twenty-one. Here a minority of the people of this State are represented in the Legislature of the State by seventy-three votes, while the majority of that people are represented by twenty-one. How is it so far as the expression of the people in this matter is concerned? If the majority of the people, speaking through the Legislature, are overcome and entirely controlled by a minority; if this is a republican doctrine, and should be carried out by the republican party; if that is the doctrine of any party in this State, and it is an absolute necessity that I should subscribe to that doctrine before I can be permitted to belong to that party, I cannot, as the gentleman from Richmond [Mr. Curtis] says, in regard to the matter, I cannot go with the party; I must diverge from it. But I have undertaken to state here, and I reiterate it, that at no time, as I understand it, in the history of this State, in the past party politics of the State, has this ever been considered as a cardinal and indispensable plank in the platform of the republican party. The ultimate tendency of all such attempts as this to interfere with what has been always unquestionably the idea in this State, and in this nation, to centralize power, to take it away from the body of the people, and have one great organ and head in the center of the State, or the Union, undertake to control and coerce the people of the country, will sooner or later end either in the destruction of the party who are engaged in the operation, or in the destruction of the republican institutions of the country. So far as it regards the city of New York, it is the pride of the people of the State; it is the pride of the nation. It is soon to become, unquestionably, the greatest point of importance, commercially, within the limits of the civilized globe. It will take care of itself if left alone to itself. Through darkness and danger and trouble and trial all great reforms, all great steps in the progress of the human race, have been made in the past. Any attempt or undertaking to do it directly against principle will eventuate in worse dangers, in worse difficulties, in worse troubles, in worse confusion, than if you permit the matters legitimately to come to their own conclusion. And I say, therefore, in this regard, and I say it without any sort of mistake in my belief, that it is the opinion of a great portion of the people of the State; and I reflect the views of the majority of my party within the limits of my own county when I say it, that if it becomes necessary that New York should go even through blood and fire for the purpose of her redemption, better that that should be done by her own people, better that she should thus be purified as it were by fire, than to violate the great underlying principle of our government, and undertake here away from them, at arm's length from them, to direct and control their affairs. I have no desire that the whole of this article should be placed in the Constitution. I only desire that the principle involved in the article should have a place,

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a habitation and a name in the Constitution of the country. I believe, sir, that there is no question but that the Constitutional Convention of 1846 believed that they had guarded this to the entire extent that was necessary. They then took the only known political divisions of this State and placed them in the Constitution and declared that so far as those political divisions were concerned, for the purposes of local government, they should be continued. They did not dream, sir, of metropolitan police districts. They did not dream, sir, of the aggregation of small portions of contiguous counties together for the purpose of creating another political division of the State. They had no idea of the ingenuity of man to concoct any such scheme as this. I care not by whom it was concocted, whether it was democrat or republican. I care not whether it received the sanction of all of the people of the locality at the time that it was done. I do not impugn the motives nor the action of the court of appeals who finally decided this question when it was brought up for their review. But I do say that in the light of the experience of the debates of the Constitutional Convention of 1846, in the light of the action of the people up to 1857 in this State, under that Constitution, this was a departure, if not from the letter, from the spirit of the Constitution of 1846. A Constitution is a rigid matter. It has to be explained as it reads by the courts; and the court cannot by intendment take any thing else but what appears upon the sheet, which gives forth the ideas of the party making the Constitution and the people adopting it; and it was under that iron fixed rule of necessity that the court of appeals were compelled to make the decision that they did. If they could have gone into the intention of the Convention, if they could have gone into the intention of the people when they voted for it, we never would have had in any law of this State, supported by the court of appeals, this idea of creating a new political disposition of the territory of this State. Therefore, sir, for that purpose, I desire that this Constitution should be plain and explicit in this regard, that there should be no question in reference to it. If gentlemen see fit to put into the Constitution that there shall be a right, a power, upon the part of the Legislature of this State, to create other divisions than those now known to the law and to the Constitution of 1846, let them come up and put them in, and give their reasons for putting them in. But if they have made up their minds that the frame-work of this State as it has existed in the past is for the best interests of the people, let them say so, and prevent any legislative action by means of which those departments shall be enlarged or diminished. I, therefore, am in favor, if nothing else can be done, if gentlemen think that this long article composed of a great many sections, is too long to go in, and is in reality a part of the work of the Legislature, I am willing, so far as I am concerned, that they shall test this principle, and this only, as contained in the tenth section of the article under consideration, and that is:

"The State, for the purposes of legal government, shall be divided into counties, towns, cities and villages, as heretofore, and no other local divisions shall be made, nor shall any territory be annexed to a city except for the purpose of changing its boundaries."

Now, let us bring that section of this article before us for consideration; then if gentlemen desire any other political districts, any other geograhical arrangement of the State for any future purpose of legislation, and they can give us good reasons therefor, let us put it into that portion of this article. But let us put into this Constitution that there shall not be, on the part of the Legislature, any power to create any other political division. The great mistake in the Constitution of 1846 was not that it was not particular enough, not that it did not state what was its intention in words clear and unmistakable; but they did not state the exceptions; they did not state the limits beyond which the Legislature should not go; and the result is that we have got a crop of State officers in the State to-day in violation of the spirit and intention of the Constitution of 1846. We have got a diffusion of the responsibilities of government here at this locality, because of the very fact that while the Constitution makers of 1846 desired to put into the Constitution all the independent State officers that should be named, to control the destinies of this State, they forgot to say that the Legislature should not go any further; and we have had half a dozen more added to them, independent, irresponsible to the great head of the State department here at Albany. Just so in regard to this question which is now under consideration. They intended clearly that the divisions named in the Constitution should be the only political division; and that for the purpose of local government those divisions should be had; and that local government should be uniform under all circumstances.

Mr. HUTCHINS—The gentleman says that he should be satisfied to take section 10 of the majority report and let it go at that. I would ask the gentleman, if that section was adopted as he has reported it—and it reads in this wise: "The State, for the purposes of local government, shall be divided into counties, towns, cities and villages, and no other local divisions or districts shall be made"—how will he have the election districts made by the Legislature?

Mr. ALVORD—I have stated that and repeated it again and again; but I will repeat it once more for the gentleman. I have stated to gentlemen and to members of this Convention and of this committee, that under this particular section of the article before them, they can go on and amend it so far forth as regards all the districts they desire to have in the State; and there is a gentleman now before me who has this morning expressed a desire to amend this section in the direction of school districts. If the gentleman from New York, [Mr. Hutchins] wants to make election districts, there is no difficulty in regard to it. All I want is a platform laid down in the Constitution so that when we come to the end of our geographical districts that will be the end of it, and that there will be no further control over it so far as the Legislature is concerned for the purpose of getting over any emergency that may arise, or any of these little questions that may come along.

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Mr. HUTCHINS—I would ask the gentleman how he would have senate or assembly districts under that section?

Mr. ALVORD—I would state to the gentleman from New York [Mr. Hutchins] that I an not a lawyer, and I understand he is a distinguished one; that he has already got in his Constitution senate and assembly districts, and that this does not cripple or cut down those districts in any way or shape.

Mr. HUTCHINS—I believe that the section that we have adopted provides that we shall have no assembly districts, but shall elect the assemblymen by counties, and then if we adopt this the Legislature could not change it in any respect.

Mr. ALVORD—That is exactly what I mean, and what the Constitutional Convention have intended to do, to put it so that the Legislature cannot go back to the districting system. We have been quite satisfied that the district system of the Constitution of 1846 was a failure. Does he agree with me that this is taking away the power of electing by districts and putting it in counties? That is where we desire it to be, and that is one of the reasons why I am in favor of putting it here in explicit, plain language that will be so clear that the Legislature shall not go beyond it. We have put it in here "senatorial districts" and "assembly districts," not in the narrow sense of the present use of the words, but a county is an assembly district, according to its population to elect one, two, three, four, five, or more members of the Assembly. Therefore this does not interfere with them at all in any way. Gentlemen must recollect that the composition of the republican Union party of this State is not such as composed in olden times the old whig party of this State; that the larger share of the men of the olden times who arrayed themselves against the democracy of New York were men who have now laid down in the bed with the modern democracy of the present day. The whigs of days gone by are largely the democracy of the present day and among its most prominent leaders, and the republican union party has an element of democracy in it, so far as regards the old political position of its members, largely in ascendency over any of the political element of its founders. Commencing in 1848, coming down through 1854 and 1856, finally culminating in the rebellion, there have large numbers of men, heretofore acting with the democratic party of the State of New York in its days of purity, who are now acting with the republican union party. And that class of men, very large throughout this State, in all its localities, put themselves upon the old democratic doctrine of "equal and exact justice to all men," as my friend from Richmond [Mr. Curtis] has said, repeating my words, giving to no one locality superior advantages or privileges, political or otherwise, over another locality; placing no greater or heavier burden upon the people in one portion of the State than upon any other people. Believing in the doctrine that if the people shall be educated as they should be in every republican government under our wise and beneficent laws, they will, sooner or later, raise this people to the position of being entitled to govern themselves, as well as the best men among us; believing in the progression of the human race, I believe that, although they may come over from other countries and throw themselves upon us—a population steeped in crime and in infamy—that the water that comes from our fountains, and that the fresh air that flows over our hills and over our valleys, will, if it does not regenerate them in the old trunk, make shoots to come forth, that will be among the best and the ablest and the noblest of the land. We have examples here upon this floor of that kind. We have examples all over the entire of our State and our nation. Out of this mass of corruption there will come forth—there must, under the genial influences of our institutions, come forth—some of the very best men and best blood that ever blessed any nation. Corruption is merely for the purpose of reproduction of that which is good and great and beneficent and benevolent. I, therefore, say to these men again, that so long as they shall give the right of suffrage to the people of this country, to exercise it in the general government of the country, in its elections for President, Governor and other officers, they should not undertake to deny it in local matters so far as regards one portion of the people and give it wholly and entirely to another portion. They should give the man in the city of New York, living within the limits of the city, as much right to speak in reference to its financial and executive officers as they give a man in the city of Syracuse or in the city of Buffalo. They should make these laws exact, uniform and equal over all portions of the State. And unless they do so—I repeat again what I have once said, and then close—unless they do so, it must of necessity eventuate, and it cannot do otherwise, in the entire disruption of the very foundation upon which we stand as a republican government, or it must drag down to utter, irremediable and hopeless defeat, so far as regards the direction of human affairs, the party that dares to violate this principle.

Mr. GOULD—There are two or three aspects of this article which have presented themselves to my mind, which I have not heard brought before the Convention in the progress of this debate. Those points, therefore, I desire to submit to its consideration. I am spared at the threshold the necessity of entering into any legal considerations applicable to this subject by the remarks which have been made by the gentleman from Fulton [Mr. Smith] and the axioms which have been been laid down by the gentleman from Jefferson [Mr. Bickford]. If I understood those axioms and principles they contain what I believe to be the truth with regard to this matter. I understand those gentlemen to say that the legitimate root of sovereignty is the whole of the people of the State; that it is indivisible, and that it exists in the people of the State alone; that nothing is obligatory upon the citizen unless it is enjoined by the people of the whole State. If, for purposes of convenience, portions of this sovereignty are delegated, for special purposes, to any smaller subdivision of the people, it is only as a matter of convenience. It is only as a principal delegates a portion of his power, for certain specific purposes, to be exercised for his benefit,

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to an agent whom he selects. And, as a principal may at any time revoke a power that is given to his agent, so may the sovereign people of the State revoke any portion of its power which it has given to a subordinate number of its inhabitants, provided that power is exercised injuriously to the rights and to the interests of the whole people. Such a resumption of its original rights cannot be rightfully complained of by any municipality, and is no invasion of its rights. I understand that this doctrine has been fully admitted by the gentleman from Kings [Mr. Murphy] and by the gentleman from Onondaga [Mr. Comstock]. They admit that the cities or the subordinate municipalities of the State, have no rightful power in themselves; that they only have it as it is given to them by the supreme power of the State. And therefore when the question is asked, as it is asked, by one of the minority reports of the committee, signed by two legal gentlemen from the city of New York, what right the people have to interfere in the affairs of the city of New York, I understand that that question ought never to have been asked by such distinguished lawyers as they are—there is no question at all about it. With this preliminary statement, I come to the remarks of the chairman of the committee, the distinguished gentleman from Albany [Mr. Harris]. I understood him to lay it down as a rule which should never be departed from in the fundamental laws of the State of New York, that there should be perfect and entire equality in all the rules and all the regulations which govern the subordinate municipalities of the State; that it is unjust and wrong to give any sort of power, or to impose any sort of disability, upon one municipal organization which is not imposed upon every other organization in the State. I dissent from this view of the case. When we were boys, we were compelled to go through a course of logic, and we were told in our logic books that one of the greatest sources of fallacy, indeed it is the greatest source of fallacy, was in what is called "the non-distribution of the middle term." The gentleman from Albany [Mr. Harris] has forgotten the monitions which were impressed upon his mind by the study of his logic book in his youth. This non-distribution of the middle term consists in putting a word or a phrase into one of the terms of a syllogism, and then putting the same word, but used in a different sense, into another term of the same syllogism; and thus the conclusion is irremediably vitiated. The word "equal" has a great variety of significations. We may acknowledge, if we please, that the State should distribute equal justice to all the citizens of the State, and to all the towns of the State. But what do we mean by equal justice? Suppose that the gentleman should desire to have an equality in pantaloons—that he should say that this equality consisted in putting an equal number of yards of cloth in every pair of pantaloons which was manufactured in the State. What would be the result of an equality of this kind? Suppose the pattern standard which he made use of was adapted for the accommodation of the nether extremities of the gentleman from Erie [Mr. Verplanck], I should like to know what my friend from Onondaga [Mr. Corbett] would do under those circumstances. [Laughter]. The very wife of his bosom would not know him. He would not even know himself, sir.

Mr. ALVORD—My colleague has not got any wife.

Mr. GOULD—That is the gentleman's misfortune, then. Or suppose you were to reverse the position, and that you were to make the pattern pantaloons such as the gentleman from Onondaga [Mr. Corbett] wears, I should like to know what the gentleman from Erie [Mr. Verplanck], or what I should do if we were stuffed like a sausage into its case, into such pantaloons as the gentleman from Onondaga [Mr. Corbett] wears. [Laughter]. Why, sir, no one but a fat man knows the misery that it causes to be incased in a pair of tight pantaloons. No one who has not experienced it knows how terrible it is to have the blood flushing his face, to have the sparks coming out of his eyes, to have all the inclosed abdominal viscera involved in misery, calling forth a wail deep enough to penetrate into the darkness of Hades and awaken responsive sympathy in the stern bosom of Rhadamanthus himself. [Laughter]. I want to know if this is not precisely the mistake that the gentleman from Albany [Mr. Harris] has made; whether he does not say that the city of Hudson, with its small nether extremities should be incased in pantaloons of precisely the same size that the portly city of New York is incased in. The great object, equal justice, with regard to men, is to make pantaloons that will fit them equally. The great object of legislation with regard to equal justice to cities, is to make laws and institutions which will fit them—which shall be adopted to their respective circumstances, so that they shall be equally well governed. We can readily understand that the great city of New York ought to be restrained in some directions by disabilities, which would be entirely unnecessary in the city of Hudson. We can understand, on the other hand, that the city of New York in some cases required powers such as the city of Hudson need not be invested with. The gentleman from Onondaga [Mr. Alvord] says that there must be an entire equality, that whatever is granted to one should be granted to another. How utterly unnecessary is this, when we consider that the circumstances of the various cities differ entirely. It seems to me that absurdity can go no further than to say that they shall be treated precisely the same way in regard to legislation in their unequal circumstances and their unequal requirements. There are certain circumstances with respect to which the city of New York differs from all other cities in the State, and all other cities anywhere. In the first place the people of the whole State have an interest in the affairs of the city of New York that they have in no other city in the State. What are the facts of the case? Almost every grain of wheat that is raised in the State of New York, almost every barrel of flour that is ground there, almost every article of agricultural production, every article of manufacture that is made in the whole State, goes to New York for a market. The property of the State

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lies in the city of New York. It is under the custody of the authorities of New York city, and liable to destruction by their mobs. We are told of the vast banking capital of the city of New York. Why, my neighbors all about me in Hudson, to my certain knowledge, are the owners of stock in the banks and insurance companies of the city of New York. There is not a county nor a city in the whole State whose citizens are not stockholders in institutions located in that city. But my constituents, while they are interested in New York, have no interest in the banks of Troy; they have no interest in the banks of Syracuse; they have no interest in the banks of Elmira, or in any other out of that city. The city of New York, in certain respects, differs from every other city in the Union. The banks of Troy may be robbed with impunity so far as the interests of the people of Columbia or Dutchess are concerned; yet the banks of New York cannot be robbed with impunity without sacrificing my interest and that of my constituents, and that of the constituents of every gentleman on this floor. This is a state of facts which must never be forgotten or overlooked. What is the course of trade? The banks in Corning, the banks in Watertown, the banks in Norwich, in Chenango county, or any other county banks, do not keep their money in their own vaults. Their funds are lying in New York, subject to draft. Nearly the whole banking capital of the State of New York lies in the city, exposed to the incursions of mobs in that city. No county has that interest in the banks of any other county that it has in the city of New York. Their property, their money, is not lying in any other city; but it does lie in the city of New York. And now, shall I be told that although this vast and gigantic city is one in which the people of the whole State naturally have an interest, they shall be cut off at once and forever from any right to rule and regulate their property in New York? Must it be given and remitted wholly over, not to the merchants of New York, but to the resident voters of the city of New York, which is a very different body of men? This reason why it is that New York differs from other cities has been well stated by the gentleman from New York [Mr. Hutchins] the other day. The topographical position of the city of New York is very peculiar. It is very long and very narrow. The geological condition of New York is such as belongs almost to no other city but New York. The whole of the surface rock of that city is hollowed out into basins where stagnant water collects; and the soil, when it is removed, discloses these basins as a source of malaria. People who desire to maintain their health are compelled to move out of the city of New York, and to reside in a different place, simply from this peculiarity. Healthy children cannot be reared in that city; and those who desire to have healthy children are compelled to remove from it. Hence it is that New York differs from every other city in the world. Its active, intelligent, and wealthy men cannot reside in it, and therefore cannot vote in it. The citizens of Elmira—those who run its factories, those whose intelligence and intellect furnish employment for its thousands of laborers and artisans—reside in the city and vote in it. So do the citizens of every other city in the State. But the men who make New York what it is—the men whose intellect and abilities gives employment to the working men of New York—they who own its ships, they who are the proprietors of its manufactories, they who use its wharves and warehouses, they who are known and honored as New Yorkers abroad, are precisely the men who have no votes there whatever. They are the men who go into New Jersey, who fill up almost the whole State of New Jersey, who go into Connecticut, who go into the counties of the State of New York lying north of the city, and who do not vote in the city of New York. This makes a difference that no wise legislator can overlook. When we were told, as the gentleman from New York [Mr. Hutchins] does tell us, and I do not think he overstates it, that seventy thousand active business men of New York go elsewhere to sleep at night, seventy thousand of these men have no vote in the city—I say that that circumstance alone is sufficient to prevent any such enactment in this article as is proposed by the majority of the Committee on Cities. It makes it dangerous. Allusion has been made here to the character of the resident population of the city of New York. I do not complain of that city because its inhabitants are mainly foreigners; but what I do complain of, and what I am alarmed at, is this: If the city of New York is the port where all these foreigners enter originally, the enterprising, the active, the intelligent, the moral and the virtuous part of those foreigners, who constitute the best materials of republican government, go to other places. They go to Minnesota and to Iowa, they go to Illinois, they go to populate the great cities of the West. New York is a common sewer, where the worst part of this immigration centers; where the lazy, the idle and the knavish naturally gravitate; and it is because it is that sewer, not because its population consists of foreigners, but because it consists of the very worst part of foreigners, that it should be differentiated from the other cities of the State; and our fundamental law should not compel us to invest it with the same measure of rights and duties as are imposed on the other cities of the State. With these remarks I come to the speech of the gentleman from Onondaga [Mr. Alvord]. You have not forgotten, sir, the bewildered amazement which came over this Convention when the gentleman announced to it, in *facei ecclesia*, the other day, that he was a "practical man"—announced what the Convention, in its wildest moments of imagination, never dreamed of before. [Laughter.] Yes, sir, you need not look with such an incredulous eye upon me; that was the very claim he made; those were the very words that he used—"a *practical* man!" The nervous system of the Convention had hardly been restored to its equilibrium before the gentleman shocked us, almost to the point of consternation, by actually proving that he was a practical man—proving it by the production of a specimen brick, drawn from the "marble quarries of eternity," and written all over with the point of a diamond [laughter] placed on the point of a pen that was

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taken from the immortal American eagle, which that famous bird dropped last 4th of July over the city of Syracuse, when flapping its wings over that illustrious city. [Laughter.] And now, after this proof of his practicality, he goes on to give us a most remarkable statement, and that statement was that we were to look upon this question of New York without reference to any political considerations whatever. He told us, as he told us again this morning, that this was a question of principle from which all political questions should be very carefully excluded. Why, this a strange idea for "a practical man." A principle is a generalized induction from the facts applicable to it. What is a principle good for which professedly excludes the most important facts upon which it is based? How are you to approach a question of this kind and exclude all political considerations? How are you to elect an alderman or a mayor and exclude all political considerations whatever? It may be very wrong to admit political considerations, but it is human nature to do it. Human nature always did carry political ideas into an election, and it always will. Suppose that we have held up a citizen of each political party, no matter how pure he may be; no matter how immaculate he may be, those who are republicans will vote for the republican candidate, and those who are democrats will vote for the democratic candidate. They cannot exclude from their minds the idea that the election of a mayor will necessarily have an influence upon general politics, and they will be influenced even in the extreme case that I have supposed, by political considerations. But we all know that it is much worse than this, where one very good man is held up, and the other is a very bad one. Each party will support its own party candidate, though he be bad. And they will support him because they are looking forward to political considerations; and they study the influence that he may have upon the success of their party in the long run. We are compelled, by the very necessities of the case, to look upon this with party eyes. What is the effect of the article proposed by the Committee on Cities? You might as well introduce an article into the Constitution enacting that the republican party should never have a majority in all coming time, as to enact the article presented here. There are some of us who are old enough to remember what happened when the old time democratic doctrine was invoked that the citizen was to "vote early and vote often." We know how many fictitious majorities were manufactured in that way; and we know what was the result of ballot stuffing. Suppose that you give to the city of New York full power over the ballot-boxes, to men who are elected by the voters of that city—not by the merchants, not by the men who contribute to its magnificent charities, not by the men who make it honored and honorable as it is, but by the voters of the city. Ballot stuffing would be resorted to now as unscrupulously as it was before the custody of the boxes was given to the police. If it was necessary for the success of the party to have fifty thousand majority, fifty thousand would be given. If seventy-five thousand were necessary it would be equally forthcoming. If a hundred thousand should be necessary they are good for it. We cannot, therefore, as "practical" men exclude the idea of politics. If this is all that comes from being "practical," a man might as well be imaginative; he might as well be a poet; he might as well be the author of the "Potiphar papers;" he might as well be a peddler or an organ grinder.

The hour of two o'clock having arrived, the PRESIDENT resumed the chair, and the Convention took a recess until seven o'clock P. M.

EVENING SESSION.

The Convention re-assembled at seven o'clock P. M., and again resolved itself into Committee of the Whole on the report of the Committee on Cities, their Organization, Government and Powers, Mr. RUMSEY, of Steuben, in the chair.

The CHAIRMAN announced the pending question to be on the motion of the gentleman from Steuben [Mr. Spencer] to strike out the first section; on which question the gentleman from Columbia [Mr. Gould] had the floor.

Mr. GOULD—Mr. Chairman—

Mr. A. R. LAWRENCE—If the gentleman from Columbia [Mr. Gould] will yield the floor, I would like to make an explanation. I understand that a remark which I made last evening, with reference to the Fort Gansevoort transaction, in reference to a resolution which was signed by the mayor of New York, was understood as applying to a gentleman who is a member of this Convention, and who was at one time mayor of that city. I wish to state that that remark was not intended to apply to my colleague from New York [Mr. Opdyke]; that at the time that I referred to that transaction I was citing a case from the twenty-third volume of the court of appeals reports, the case of Roosevelt *v.* Draper which was decided in June, 1861, some six months before my colleague became mayor, and that the ordinance to which I referred was passed in 1852, some ten years before my colleague became mayor. Therefore no gentleman who heard me, and who knew the facts, could have understood my remark as applying to him; but in justice to him, and in order that neither he nor I may be misunderstood upon this floor, I wish to say that my remarks were intended to apply to the Hon. Ambrose C. Kingsland, who was mayor of New York in 1852, and not to Mr. Opdyke.

Mr. OPDYKE—I thank the gentleman from New York [Mr. A. R. Lawrence] for his explanation. I knew he would not intentionally misrepresent me or do me any injustice. I am very glad to know that he has not done it even inadvertently. While on my feet, as my colleague from New York [Mr. Hutchins] has referred to the purchase of the Fort Gansevoort property as a grave wrong and outrage on the city of New York, and as it occurred while I filled the office of mayor of that city, I ask leave to say that as mayor I did all in my power to arrest that transaction. I vetoed the ordinance, pointing out its outrageous character, and denouncing it with as much vigor as official courtesy would permit. It was passed over my veto by a unanimous vote in

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both boards I think, except the vote of Alderman Dayton. I followed it to the courts, resisted it there, and expressed the determination that the matter should be carried to the court of appeals; and seeing that determination, the party who was pressing this claim desisted from further efforts until after the expiration of my term of office, after which he secured his point.

Mr. GOULD—The chairman of the Committee on Cities [Mr. Harris], in the course of his remarks, was pleased to say that, in his opinion, unless the article prepared by his committee was adopted as a part of this Constitution, the instrument which should be the work of our hands and should be submitted to the people, would be utterly and contemptuously rejected by them. But, sir, he, very wisely, in my opinion, told us that this ought not to make any difference with us; that we ought not to pay any undue attention at all events to questions of that character, but that we should do as our judgments and consciences dictated to us. He said that his preference for this article arose from the fact, and he announced it, sir, with all the oracular and judicial *ore rotundo* which becomes him so well, and of which he is so great a master, that he believes in the article because it is right. Now, sir, I take issue with the gentleman; I believe that it is wrong. When he told us here that he believed it was right, the reason that he gave for his opinion was that it was equal in its action upon all the municipal organizations of the State. I have combated the idea of equality in that sense in the remarks which I had the honor to submit to the committee this morning. Suppose, sir, that there should be an organization of thieves on the frontiers of this State. Suppose that that class of men should establish a city, say on the borders of Hamilton county. It may be urged, sir, that this is an almost impossible hypothesis, but is it more impossible than the establishment of Salt Lake city would have been considered twenty years ago? Is there any greater inherent improbability of such an organization than there was then that an organization for polygamy would be established at Salt Lake? It is known that the tendency of thieves is to band themselves into aggregations. It is known that very few of them rob alone; that they work in gangs; that they associate together; that they spread a net over all parts of the State. Now, sir, is it absolutely impossible that such an organization may be established, that such a city may be built, that such a city may be inhabited? If that is a possible hypothesis at all, I would ask whether the principles of democratic justice, or any kind of justice, would demand that an organization of that character should be treated as all the other political organizations are treated in the State. It seems to me that the mere mention of that possible fact is sufficient to show us that it is exceedingly unwise to require the Legislature to stretch all the cities upon a Procrustean bed, to prevent it from making any law whatever in establishing a city, which should not apply to every other city in the Union. This consideration alone, ought to restrain us from the adoption of the article. By one of the provisions of this article every city is allowed an unlimited power of taxation. The Legislature has no right to interfere with it, nor restrain this power of taxation. Is that right, sir? Is that proper? May not the liberties of the people be exceedingly endangered by a power of that character exercised without limit and without restraint? We have had an allusion on this floor to the proposal by Mayor Wood to establish a free city in the city of New York; to cut it off from its connection with the rest of the State, and make it an independent free city. If this article is adopted what is to prevent the carrying out of that idea if it should suit the majority of the city of New York to do so? If you allow them to assess an unlimited amount of taxation, may they not raise troops, may they not provide themselves with munitions of war? May they not levy upon the property which the people of this State are compelled to lodge there for exchange in the marts of the world, in order to carry out this idea? And yet gentlemen are willing to place this power in the hands of the voters of the city of New York. How would they feel, sir, if they were cut off from the only port in their possession which enables them to communicate with the rest of the world, and were compelled to pass with their produce through a foreign, at all events, and it may be through a hostile territory? It seems to me that the people of the State of New York ought to pause before they insert in their fundamental law an article giving these powers. The gentleman from Albany [Mr. Harris] and the gentleman from Onondaga [Mr. Comstock] have told us that invariably and at all times the law has only recognized the division into counties, into cities, and into towns and villages, and that these subdivisions are all that the law has ever known. Well, sir, this is not true; but supposing it were true, is there any thing sacred about a county, or a town, or a village? Is the existence of these precise subdivisions in any way essential to liberty or security? Would any man's liberty or property be endangered by their alteration or their destruction, if there should be any valid reason for doing so? These were organized many years ago for public convenince, and public convenience alone; and when King Alfred made these divisions of territory there were smaller divisions also. He not only established these divisions which have been enumerated by these gentlemen, but he further subdivided the towns and villages into hundreds, and into tithings. Well, in the course of time these smaller subdivisions were found to be unnecessary for the purpose they were designed for, and they were quietly dropped. What is there to hinder—if the convenience and the interests of the people of the State shall demand it—what is there to hinder them from changing these organizations, if by such change they may promote the convenience of the public? I see none whatever. But, sir, there have been other divisions known to the law. What is the school-district but a subdivision which is known to the law and recognized by the law? But if this article shall be passed it breaks up some of the very best organizations in the State. Where two counties lie contiguous to each other there are many school-districts whose territories extend over

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both sides of the line; but when this article is passed all these union school districts must be broken up to the great detriment of education; because they cannot operate in territory which forms a part of two different political organizations. I think we ought not to do this. The school-district is a very important part of our subdivisions. The right of self-government is exercised by them, they have the power of taxation, and it has been done with great convenience to the people, and without any objection from any portion of the people, so far as I know.

Mr. CHESEBRO—That is a matter of amendment merely.

Mr. GOULD—I am speaking of the article itself. The question is now upon striking it out. The gentleman from Onondaga [Mr. Alvord] tells us that towns are all equal by the law, and that cities ought to be equal also; but, sir, that does not follow. The towns of the State of New York vary very slightly with regard to population. They are very much alike in circumstances; there is very little to differentiate one town from another. General laws may be perfectly applicable to them, when they would be entirely inapplicable to cities where the circumstances are so exceedingly various. The gentleman from Onondaga [Mr. Alvord] startles us again by the remarkable assertion that "there is yet a little germ of democracy" in the republican party. *Et tu Brute!* [Laughter.] Does the gentleman really mean to tell us—he who has been long our trusted and honored leader—does he mean to tell us that all that is left to us is a "little germ" of democracy, that we have not the whole plant developed, but only a little germ? Sir, I am surprised at this insinuation. I had supposed that the republican party owed its origin solely to the pure spirit of democracy. I supposed it was conceived and brought forth in democracy, and that its cradle had been rocked there. I supposed that the whole object of the republican party was to extend equal justice and equal rights throughout the whole Union, which is all the democracy I know any thing about. If the republican party is not devoted to that idea, surely its mission is useless, surely its pretentions are most outrageous. I regret that the gentleman should have cast such an imputation as this upon the party with which he is associated, and hope it may not foreshadow his deserting it.

Mr. ALVORD—Will the gentleman give way a moment? The gentleman must have been very thick of hearing, or I must have been very unconscious of what I was saying, if I undertook to utter such a sentiment. I did not use the word "germ" at all. The very words that I used were these: "that the republican party, as at present constituted, was largely democratic; democratic from its origin, in 1848, up to this time, and that the whig party which composed the opposition to the democracy at that time had gone over to the modern democracy, and composed a large portion of it. That is what I said.

Mr. GOULD—That may be what the gentleman meant to say, but here I wrote it down, at the very instant that it fell from his lips, and those are the very words that I wrote down. "There is a little germ of democracy left in the republican party."

Mr. ALVORD—I did not use that language.

Mr. GOULD—I do not know how the stenographer has it, but that is the way that I wrote it down, and that is the way that I understood it.

Mr. ALVORD—I hope the gentleman will take it now as I said it—as I now say I said it.

Mr. GOULD—That is all right. I take the gentleman's statement as he now gives it, and am very glad to hear it. But, sir, the gentleman opposes the real idea of democracy. He is in favor of taking the sovereignty away from the whole people, and it is only democratic when it is exercised by the whole people. He proposes to take it away from the State, and to give it inalienably to cities; to delegate the power of the whole people to a certain portion of them, a power which may be, and often is, exercised injuriously to the interests of the State. Sir, this is not democratic, and it is because it is not that the republican party fight against it. The gentleman from Onondaga [Mr. Alvord] says, also, that this idea of commissions is based upon a loophole in the Constitution which was overlooked by its framers and by the people who accomplished it; and, sir, the gentleman from Onondaga [Mr. Comstock] said that it was sustained by an evasion of the Constitution. Now, sir, this is a hard measure to mete out to us. I do not understand that it—

Mr. S. TOWNSEND—I do not see the gentleman from Onondaga [Mr. Comstock] in his seat, and beg leave to say that I remember that the gentleman from Onondaga was very particular in saying that it was an evasion of the Constitution by the Legislature and not by the courts. The expression that the gentleman has used would lead, I fear, to the impression that the gentleman from Onondaga said it was an evasion by the courts.

Mr. GOULD—I did not mean to say so. He said it came in by an evasion. Where does the evasion come in? The section of the Constitution under which this comes in is in the tenth article, second section. I will read it:

"All county officers whose election or appointment is not provided for by this Constitution, shall be elected by the electors of the respective counties, or appointed by the boards of supervisors, or other county authorities, as the Legislature shall direct. All city, town and village officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof as the Legislature shall designate for that purpose. All other officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct."

Now, here was a vast power lying upon the hands of the members of the Convention of 1846, which they must distribute somehow. They had no sort of idea of excluding this or any thing else. They had this vast power lying upon their hands, and they distributed it without much fore-

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thought or consideration. They had no fixed idea. The debates of that Convention show that they had no fixed policy with regard to this matter. The contemporary history shows the same thing. Here, then, is a division of powers which they make; but they naturally and evidently thought that cases might arise, that contingencies might happen, which were not met by the specific provision which they had laid down. They expressly anticipated cases of this character, and they say that when such cases do arise, then the officers thus arising shall be elected by the people or "appointed, as the Legislature may direct." There is nothing plainer than this. What were the circumstances? In consequence of the great growth of cities it was found that it was necessary to have more efficient sanitary regulations than they hitherto had; and it was found necessary to have more efficient police regulations. They found, on examining the matter, that it was impossible to have adequate sanitary provision for the city of New York unless the contiguous city of Brooklyn was included also in its provisions. It was found that it was impossible to have an adequate police establishment unless that city was also embraced. The large and populous village of West Troy, lying on the other side of the river from Troy, is almost a suburb of that city, and almost belongs to it. How could you have an efficient police in the city of Troy unless the same police arrangement was extended over West Troy also? It was impossible to carry out the idea which the Legislature had in its mind; it was impossible to meet the beneficent intentions which they had toward those cities, unless this contiguous territory was included. And what was the most natural and most obvious method of carrying out that idea? It was to unite them in the form of a district—unite them in some other form than that of the city, village or town. It was perfectly natural, perfectly proper, that they should do so; and if they did so, then precisely this contingency arose which the Constitution has provided for. The Constitution then steps in and declares that the officers for such district shall be appointed in the manner prescribed by the act. Here was no evasion, sir, of the Constitution. It is absurd to call it an evasion. It was perfectly natural and just; perfectly proper and constitutional, and commends itself to the good judgment of every section of the State. It was no evasion of the Constitution, it was introduced through no loophole. Now, sir, leaving the gentleman from Onondaga [Mr. Alvord] I have a word or two to say in reply to the gentleman from Richmond [Mr. E. Brooks]. He says, sir, that the police, this new police, does not prevent robbery; that its members are inefficient; that they do not accomplish all the people of New York have a right to expect at the hands of a police. I am aware that a great deal is going on in New York which might and ought to be repressed, but if I am correctly informed—and I have taken a great deal of pains to inform myself—the fault does not lie with the police so much as it does with the police justices who are elected by the people. The police weary themselves with complaints to the authorities. They arrest men and bring them before these police justices; but, sir, if the men thus arrested are of the right political stamp they are at once let off. I have been told by police officers that they are deterred from doing their duty, that they have grown weary of the work, simply because their labor has been rendered altogether nugatory by the action of the police justices. If the action of these police justices is an evidence of what would occur if the appointment of the police was given to the mayor and authorities of New York, the property holders of New York may well tremble at the consequences. The gentleman from Richmond [Mr. E Brooks] tells us of the vast charities of New York. Sir, I honor and respect those charities. I acknowledge them. Yet the gentleman misrepresents the case exceedingly when he says that those who contribute to those splendid charities, for which New York is famous, are the persons who do the voting of New York. Sir, the large amount of those splendid charities is contributed by men who have no votes in the city of New York, men who reside in New Jersey, Connecticut, and the counties of the State north of the city of New York. These men have their residences there, and they do not vote in the city. These charities are not to be credited to the voters of New York, although they may be credited to men who do their business in that city. The gentleman goes on to tell us of the riots in the city of New York. He admits that those riots were outrageous. He does not defend the loss of life which occurred there, and the loss of property, and all the outrages which were inflicted upon women and upon children. But he goes on and tells us that riots occurred in other cities. Suppose they did—was there ever a riot of that degree of malignity in any other city? He makes an equation. He puts on one side of the equation the riots of New York, and on the other side of the equation he puts the Jerry riots in Syracuse. Sir, I was astonished at that equation. I was astonished at that balance of the two instances. What was, sir, the Jerry riot? A poor colored man was carried on a cart through the streets of Syracuse, and the brutal officer in charge was beating him as he lay there, to prevent his outcries and his struggles to escape; and the humane people of Syracuse, seeing this, rushed upon that officer and rescued poor Jerry Is there any parallel whatever—

Mr. ALVORD—Will the gentleman allow me to interrupt him? I do not undertake to stand up here as the advocate either for one side or the other in that case; but the gentleman must acknowledge that I have the privilege, from the position which I occupy, of knowing more about that transaction than he does; and I say that his statement in that regard is entirely untrue. This man Jerry was taken by the officer from a salt block. The moment he was taken by that officer then commenced the cry going through the streets that he was taken under the fugitive slave law. The employer started the cry in the first instance, and the mob followed the officer and succeeded in rescuing the negro, who was not beaten by the officer in any way, shape or manner.

Mr. GOULD—I have been assured by three or

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four parties that were eye-witnesses of the fact that he was beaten with a cart-rung.

Mr. COMSTOCK—I was present in that town at the time, and I corroborate entirely the statement of my colleague [Mr. Alvord].

Mr. GOULD—Was the gentleman an eye-witness of the whole transaction?

Mr. COMSTOCK—No, sir; I did not see it.

Mr. GOULD—My authority was a very distinguished and very excellent citizen of Syracuse. He may be mistaken; but, at all events, it was the instinct of humanity in Syracuse that prompted that rescue, and not the instinct of brutal violence and riot. I do not know all the circumstances. It may be that I have been misinformed, but if I am informed correctly, I think it is an honor to Syracuse rather than a disgrace to it. I, sir, am a Quaker, and therefore disapprove of fighting. I am a coward, also, and afraid to fight; but if the circumstances occurred as I have stated them, and if I found I had absolutely mingled in that mob and shared its dangers, I should have a higher respect for myself than I ever did in my life. There can be no sort of parallel between the mob in Syracuse that rescued Jerry and the mob in New York that destroyed women and children. Now, what is it that is proposed to be done? To wipe out all the commissions which have been established in the city of New York at one fell swoop. You begin by destroying the emigration commission. If there was ever a commission which was a work of mercy in this State it has been that one. That had not a republican organization, nor a republican origin. The gentleman from New York [Mr. Develin] who has a seat upon this floor, was its father. He was a member of the Legislature of 1847 when it was incorporated. He begged for it, he plead for it, as did a great many other democratic leaders of the city of New York. I have never heard that in any single instance the commission for emigration has been denounced by any person whatever. All who have spoken of it have spoken of it as a ministration of perfect mercy and perfect benevolence. What good would be done by exterminating a commission which has done so much for suffering humanity? If this is destroyed, the old robberies which were committed on the immigrants will be renewed to-morrow.

Mr. M. I. TOWNSEND—The Convention of 1846 was democratic. It is not a city institution.

Mr. GOULD—I think it is. Good lawyers concede that would be destroyed in this article. I may be mistaken in that, but it would certainly strike out the police commission. And what has the police commission done so very bad that it must be thus summarily disposed of? The gentleman from New York [Mr. A. R. Lawrence], last evening told us that he believed the whole State was opposed to it. His colleague from New York [Mr. Daly] this morning corroborated his statement. But we hear from other gentlemen from New York upon this floor, that this is not the case; that the merchants, the tax payers, those who are most interested in the practical working of the police commission, are exceedingly desirous to have it continue. We hear from the life assurance companies of New York—they who are more interested in sanitary matters than any others—they unanimously beseech us to continue that institution. The fire insurance companies, who are more interested in the management of that matter than any others, unanimously petition us to continue the fire commission. They are citizens of New York whose voices we ought to hear, and they prove that there is not as much unanimity among the citizens in their antipathy to these commissions as some of these delegates assert. But if there is this violent antipathy to the commissions in the city of New York, why is it that we have heard no petitions? They certainly cannot be so very much annoyed by them, or they would have besieged us with petitions to change it. But we have heard nothing of that kind; they do not hate them enough for that. Then the excise commission will be blotted out of existence. What will be the result of that? We are told that the excise commission of New York effects the following good objects: First, that the effects of the metropolitan excise law are exhibited in the habitual quiet and orderly manner in which the New York elections are conducted. Can any body deny that that has been the result of the establishment of that body? Can it be denied that the elections of the city of New York are vastly more orderly since the establishment of that board than they were before? It has largely increased the balances to the credit of the poor in our savings banks. Is that any thing injurious? Has that result of the board ever been denied on this floor by any gentleman whatever? We are told that it has produced "a diminution of arrests for disorder and crime by the police, who formerly made more, but now make fewer on Sundays than on any other day of the week. That during the thirteen months in which we have not been prohibited by the courts from giving effect to this law, the total number of arrests on Sundays by the police, for offenses resulting manifestly from too free indulgence in the use of intoxicating drinks, was 2,514, while on the Tuesdays of those same months it was no less than 6,021, or more than double the aggregate of arrests in the corresponding Sundays. That this disproportion is wholly new to our city's experience, as under other laws there were more arrests on Sunday than on any other day of the week. Thus, in the eight months of 1865, from May to November, inclusive, there were 3,515 of the arrests made on Sundays, and but 3,380 on Tuesdays." When we are told that the number of criminals have been diminished one-half by the operation of this law—2,514 in place of 6,021—what are we asked to do? By the enactment of this article we deliberately declare that this diminution of crime shall cease. The blood of these men will be upon our heads. Are we prepared for this? Are we prepared deliberately to enact iniquity into a law? We shall do so if we pass this article. It seems to me that the statements which have been made here, undoubted statements—statements which cannot possibly be impeached—show us that the welfare and the interests not only of the city of New York but of the whole State are involved in the continuance of these commissions. They have certainly

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produced improvements wherever they have been established. The present organization of the fire department has diminished the loss by conflagration in the city of New York to a very great degree. They do their duty more cheaply; they do it more efficiently. The establishment of it has prevented a great deal of crime and rowdyism which formerly ran rampant in the city in all the fire engine houses throughout the whole length and breadth of it. Now, are we prepared to go back to this? Are we prepared to consign the citizens of New York to the terrible inflictions which they suffered previous to the establishment of these commissions? If we are not, let us devise a better system. Let us let well enough alone. Let us, until something is done by these institutions worthy of bonds or of death, encourage them to continue in the path that they have usefully trodden. This only seems to me to be the object of a statesman; this only seems to me to be the object of a true patriot, a sound citizen and an enlightened Legislature. Let us seek to improve rather than to overthrow, and the fruits of good government will develop themselves in increasing abundance, giving peace and comfort to the people, and vindicating genuine democracy from the opprobium which the abuse of the principle has brought upon it.

Mr. LAPHAM—This discussion has taken a very wide range. I do not propose to follow the example of the gentlemen who have preceded me, by entering into any lengthy discussion of the various topics which have been adverted to. I do not intend to examine this question with reference to the effect I suppose it may have on the future of the republican party or of the democratic party. I regret that the gentlemen engaging in the discussion should have taken into consideration topics of that character. We are here to make the fundamental law for men of all parties and of all professions. We are to make a law which is to be administered whether the one party or the other shall be in the ascendency in the State, and we ought to found it upon correct principles with reference to the philosophy of government itself. The city of New York participates in all the affairs of the government of the State. It is represented in the legislative branches of the government. It participates in the choice of the Executive of the State, and of the judicial officers of the State, who are chosen by general ticket. It takes its proper part in the framing of all the laws by which the citizens are governed. The same law of property which protects you and me protects every citizen of the city of New York. The same law which is administered in a court of justice in the county of Albany or Ontario is administered in a court of justice in the city of New York. And the same instrumentalities which are required for the execution of the laws in one portion of the State are presumed to be required for the administration and execution of the laws in every portion of the State. If I understand the views which have been expressed by many gentlemen who have spoken upon this subject, and entertained the views which are, according to my reading, embodied in the article before us, I would be in favor of shutting out the city of New York from participation in legislation. I would carry the idea out, and let the city of New York make its own laws, frame its own government, and take care of itself; for that seems to be the central idea which enters into the minds of gentlemen who favor the adoption of this article. But nothing of that kind can be tolerated; nothing of that kind is permissible. We have adopted an article in which we have clothed the Executive of the State with the power and charged him with the duty to see that the laws are faithfully executed. Under the provision of that article of the Constitution, it will be as much his duty to see that the laws are executed in the city of New York, or in the city of Buffalo, or in the city of Syracuse, as in any of the rural districts of the State.

Mr. CHESEBRO—I would like to inquire to what article the gentleman refers?

Mr. LAPHAM—The article in relation to the Governor and his powers and duties.

Mr. CHESEBRO—I am a little surprised at the statement.

Mr. LAPHAM—It is as much his duty to see that the laws are executed in the city of New York as it is to see that they are executed in the county of Ontario. And whatever instrumentalities are necessary to enable him to execute the laws in any locality, he is bound to employ for the purpose of their execution. And whatever instrumentalities the Legislature from time to time may regard necessary to enable him efficiently and successfully to administer the laws, the Legislature should, in its wisdom, provide. Now, the fundamental difficulty with this first section which the gentleman from Steuben [Mr. Spencer] proposes to strike out of this article, is this; let me read: "The chief executive power in cities shall be vested in a mayor." What is the meaning of this language? This is to become a part of the Constitution of the State. "The chief executive power in cities shall be vested in a mayor." But this is not all. The section proceeds: "He shall take care that the laws are faithfully executed." Now, adopt this section, let it become a part of the fundamental law of this State, and what condition of things will be presented? How long will it be before the Governor of the State of New York will be brought into collision with a half dozen mayors in different sections of the State? There is occasion for executing the laws in the city of New York. The mayor may issue his proclamation for his mode of executing them; the Governor may undertake to execute the laws as he shall think proper, and a collision will result at once. I will not impute to the honorable gentlemen who compose this committee, for I am not supposing any thing of that kind to be possible, that they had any design or intention to create this state of things within the bounds of the State of New York. The difficulty is inherent. It is impossible to undertake to regulate any portion of the State as an independent locality or jurisdiction, by virtue of the Constitution of the State, without running upon this difficulty at once. It cannot be done.

Mr. CHESEBRO—Will the gentleman allow me to ask him a question?

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Mr. LAPHAM—Certainly.

Mr. CHESEBRO—Is it not now the duty of every mayor, including that of the city of New York, to see that the laws are faithfully executed?

Mr. LAPHAM—Yes, sir; but it is not the chief executive power which is vested in any mayor. There is the trouble with the provision. It is not now a constitutional power vested in any mayor. There is the difficulty. It is the duty of the sheriff of every county to see that the laws are faithfully executed, but it is not a constitutional duty over which the executive has no control. It is not a duty in the exercise of which the ex cutive cannot control the sheriff. The Constitution of the State, so far as it provides for the execution of the laws which are enacted by the Legislature, must deposit in one hand the power to control the execution and administration of the laws. If we undertake to subdivide it—if we undertake to place a portion of it in the hands of one body of men, and another portion in the hands of another, and to have it supreme in each, that moment we run into the very difficulty which I have suggested; and that difficulty is embraced within the terms of this first section of the article. There is another reason why I am opposed to the provision of this first section of the article. I am opposed to it by reason of the tremendous power which it invests in the hands of one man in each of the cities of this State. The condition of the mayor of a city is vastly different from the condition of the governor of the State. The mayor of the city is the choice of the entire locality over which he is clothed with jurisdiction by the provision of this section. His power is absolute by the common consent of the entire body of the people residing within the jurisdiction within which he is to exercise his powers. It is not so in relation to the administration of the affairs of the State. There are checks and balances in the administration of the State government to operate upon the minds of the executive in the exercise of the power with which he is clothed by the fundamental law. One county has a political influence in one direction, and another in another. There are balances; there are restraints; there are admonitions; but you clothe the mayor of the city of New York, or the mayor of the city of Buffalo, or the mayor of the city of Syracuse with the entire power of appointing all the subordinates who are to execute the laws within that city; you give the absolute power which is contemplated by this article, and it is a power in view of which gentlemen should pause, in my judgment before they vote upon it or decide to confer it on any single individual.

Mr. CHESEBRO—I would like to ask my colleague another question. How much more power does this confer on a mayor than is conferred by the plan of the canal committee, of which my friend is the chairman, upon the superintendent of public works?

Mr. LAPHAM—I hardly think the question of my colleague deserves a serious answer. I hardly think it is propounded in seriousness, and with the expectation of receiving an answer. There is no analogy between the cases. The whole powers and duties of the superintendent of canals, are to be regulated by law. The Constitution simply creates the office. His powers and his duties are to depend upon the will of the Legislature, but here, the fundamental difficulty is that the chief executive power, by the Constitution, is to be vested in a mayor, and that the mayor by the Constitution, is to be charged with the execution of the laws. I have looked through the other reports—the report of the minority committee, and the report of the gentleman from Kings [Mr. Murphy], and I see that they have carefully drawn some portions of the sections recommended by them with a view to avoid this very difficulty to which I have referred. Indeed, in the report of the gentleman from Kings [Mr. Murphy], there is a succinct and careful statement of these very evils, and of the arbitrary and tremendous power with which this article is to clothe a single individual, in case it shall be adopted. It is for this reason—the inherent difficulty of engrafting in the fundamental law any power with reference to a particular locality in the State, and with reference to the exercise of the functions of government by officers in that locality—which constitutes the difficulty in the way of incorporating in the Constitution any thing upon this subject. I do not now say whether or not these commissions which have been referred to, are wise and beneficent in their operation. The mode in which we should reach that, if there be any objection to their existence, is by placing in the Constitution proper restrictions upon the exercise of legislative power with reference to localities such as cities and incorporated villages. There is no difficulty whatever in placing in the body of the Constitution such a check as shall restrain the exercise of legislative power for any improper or partisan purpose with reference to municipal affairs. I concede, in its entire length and breadth, the propriety of the doctrine that with reference to all municipal affairs, a city should be left to manage its own concerns precisely as a town or village manages its affairs. I do not claim that with reference to those matters which are purely municipal in their character, it is proper for the Legislature or the State to undertake the exercise of those functions. I would not send to the city of New York a commission to clean the streets or keep sidewalks in order, any more than I would send such a commission to the village of Canandaigua, where I reside. But so far as the administration and execution of the general laws of the State are concerned, those laws in which the people of the city of New York participate precisely as I do, which they help enact precisely as I do—with reference to the means necessary, I repeat, for the execution of those laws—I would have the supreme power of the State the only power which is to be concerned in their administration. There is no safety in placing that power anywhere else. There is no security or propriety in putting that power anywhere else. If a district, as has been suggested, becomes an anti-rent district, I would clothe the Legislature with power to send such instrumentalities there as should secure obedience to the law. If the city of New York, or any other city, contains elements which make it neces-

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sary to send something beyond the ordinary constabulary force which is provided for the purpose of aiding in the execution of the laws, I would have that force sent by the power and authority of the State. The city and county of New York elects a sheriff precisely as the county of Ontario elects its sheriff. Adopt this first section of the article in your Constitution, and what power would the sheriff have in the city of New York? None whatever. He is entirely overshadowed, and his power may be overcome by the supreme power which is vested by the Constitution of the State in the mayor of the city. Again, if it be proper to put in the fundamental law provisions such as are contained in this article, then another thing follows. It follows, as a necessary consequence, that that power which has been reserved to the Legislature through all our history thus far to alter, modify and repeal, if necessary, any or all of these charters, is impliedly taken away. I would not abdicate the supreme control of the State in reference to any of these general matters. If the charter of New York, or the charter of Syracuse, or the charter of Buffalo, needs to be changed by legislative action, I want that power preserved in the Legislature. Now, adopt the theory which has entered into the minds of those who proposed this article, and that power is impliedly taken away, at least it would be improper to exercise it.

Mr. GRAVES—Will the gentleman allow me to ask him a question?

Mr. LAPHAM—Certainly.

Mr. GRAVES—Suppose the mayor of the city of New York should fail, from want of power or from unwillingness, to see that the laws were properly executed, does that article in the Constitution take away from the Governor the power of seeing that the laws are properly executed?

Mr. LAPHAM—Probably not. I have never argued or attempted to argue that it did. But suppose the mayor of New York should undertake to execute the laws in a way that he saw fit, and suppose the Executive of the State should undertake to interfere in his way of administering them, I ask the gentleman from Herkimer [Mr. Graves], under these two provisions of the Constitution, one vesting the chief executive power in the mayor, who is charged with the execution of the laws, and the other placing in the Executive of the State that power, how is that question of conflict to be determined?

Mr. M. I. TOWNSEND — This article determines it, and gives the chief power to the mayor.

Mr. LAPHAM—Well, who can fail to see that the necessary and inevitable result of the adoption of this policy is to open the door for perpetual conflict between the officers of these municipal governments and the executive power of the State. Now, I am opposed to the provision of this first section which renders the mayor ineligible, though that objection perhaps could be obviated by an amendment. I see no propriety in such a provision as that. I cannot see any wisdom in it. If it is proper to vest in the mayor of a city, by the Constitution of the State, the chief executive power of the city, the power and duty to see to the execution of the laws, and he administers the government wisely and well, I do not see why the people should not be at liberty to continue him in his place. The very interposition of this clause in the section presupposes that the power with which this officer is here clothed is a dangerous power. Whoever drew this section had in his mind the idea "here is a man clothed with tremendous power, and it will not do to allow him the opportunity to be elected for a second term, by reason of the power which he thus exercises." In other words, this provision is virtually a confession of the danger of the power with which this officer is to be clothed. Now, sir, it seems to me that this whole theory of undertaking to regulate and establish the powers and duties of the various officers of cities by provisions in the fundamental law, is an erroneous theory of the system of government under which we live. It is a departure from our theory of government. We should have but one Constitution. This provision virtually creates two Constitutions, one for the city and another for the State at large. We should have but one. We should have but one authority, clothed with the chief executive power to administer the laws of the State. Unless we subdivide the State, as I have suggested, and give the power to legislate separately, to separate departments, it seems to me that this necessarily follows. If this be so, then I suggest to gentlemen who represent the city of New York, and who are sensitive in regard to the multiplicity of these commissions, that the wise and proper mode of disposing of this question is to incorporate in the proper article of the Constitution, the one in relation to the powers and duties of the Legislature, such restrictions as may be proper, to prevent the unjust exercise of legislative power with reference to the municipal affairs of these corporations. With reference to the general affairs of the State, with reference to the execution of the laws of the State, it will not seriously be claimed by any gentleman upon this floor that the mayor of a city should be charged with the discharge of that duty, or that it is his right or privilege to have any thing whatever to do with it except as a citizen of the State. It is enough to say to him, "You participate as a citizen of the State in the making of these laws; your rights, your property, your person are protected in their administration; that is all you can claim; but in reference to your municipal affairs we give you entire control; that is a matter which belongs exclusively to you." This, in my judgment, is the true line of distinction. If it be so, sir, then it does seem to me that all this effort to incorporate affirmative provisions in the body of the Constitution, clothing the officers of cities with definite and specific powers, is a dangerous attempt, and one which, if successful, will subdivide and break up the unity of the government of the State. With reference to these commissions, I have no definite judgment in respect to them. In regard to the main commissions, particularly in regard to the police commission, which is the most important one of all, I have understood that the operation of that commission has been acceptable to the people of the city. It may be so, or it may not; at all events, it is no new thing in its

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application to cities, as I believe has been already suggested by gentlemen during this discussion. The city of Baltimore has a like number of commissions applied to it; the city of London is under a like number of commissions. It is a mode of administering the general laws within the localities of cities which is not now adopted for the first time, or new, with reference to the administration of affairs in the city of New York. But as I said before, whether these commissions are wise or unwise, in my judgment this is not the proper way in which to get rid of them. The proper mode in which to get rid of them is for the gentlemen who come here from New York (as was said by the gentleman from Montgomery [Mr. Baker] last night) and solicit the appointment of these commissions, to turn their attention to prevailing upon the Legislature to reverse their action, to reconsider their determination and to take away from the city of New York those commissions which have not worked acceptably or well. The remedy is there. The great city of New York, sir, has an overshadowing influence in the affairs of the Legislature of this State. It has now control of one branch of the Legislature. If there is any injustice in this legislation, there is no difficulty in the way of its being corrected in the ordinary manner in which unwise laws are repealed. It may be corrected precisely as the charter of the city is from time to time, and I dare say annually, modified and changed by acts of the Legislature. There is no trouble about that, but there is very great danger in the opposite theory, as I have already said, and I beg to repeat, in conclusion, that if you undertake to engraft upon the Constitution affirmative provisions of this character you build up the cities of the State as separate and independent sovereignties, and you subdivide and destroy the unity of the government of the State.

Mr. SCHUMAKER—I do not intend to make much of a reply to the remarkable quibble of the gentleman who has preceded me [Mr. Lapham of Ontario]; but certainly it is one of the most astonishing quibbles that I have ever heard in a deliberative body. The mayor of a city is only designated in this article as the chief executive officer of a city, and the gentleman presumes here to tell us that the chief executive officer of a city could set up his authority against the chief executive officer of the State, the Governor, whenever such officer saw fit to enforce the laws of the State in a city. This is specious and fallacious. Cities and counties are only parts of the State, and its chief executive officers are all subordinate to the Governor when executing the laws of the State, which are supreme. He insinuated also that even the chief executive officer of a city comes in conflict with the chief executive officer of a county, the sheriff, and that with this provision in the Constitution the sheriff of the city of New York would be unable to serve a writ in the discharge of his duty. This argument is equally illogical and fallacious, and I will here take leave of the gentleman from Ontario [Mr. Lapham] and his remarkable quibble, without another word of reply. Mr. Chairman, I believe, with gentlemen on this floor, that the time will come when the Legislature of this State will repeal, if they so desire, the laws which have been passed since 1857 establishing these commissions in our cities. But I fear a far worse state of affairs than the simple repealing of these commissions—I fear retaliatory legislation? As a lover of good order—as a believer in good government, I do not wish to see any retaliatory laws passed in this State. For "two wrongs" the old adage says "never make a right." I do not wish to see members from the cities which have been trampled upon for the last ten years by these commissions, meet together as the country members of the Legislature have met together for the last past ten years to manufacture districts and commissions for the country. I want this strife to stop just here. We are getting in the majority. The light is breaking in the east. We see daylight. We see that the time is coming when we can apply the same thumbscrews to the people in the country that they for the last ten years have applied to us, when we can administer to them the same medicine which they have administered to us; and malicious or revengeful men would say "God speed the time." I say no. Every lover of good government says no. Every true lover of the glorious Empire State says no. Stop this exceptional, this special legislation just here. Put a clause in this Constitution stopping it forever. Why when the democracy get in the majority in the Legislature some poor frozen out democrat from St. Lawrence or Washington will come and say to us "we want a commission for Washington and St. Lawrence counties, we want them united together under a commission." "Why?" "Well those men are bought and sold like cattle at every election, and it is the duty of the democracy to reform those miserable criminals. We must have a commission." "But it is not right. It is an evasion of the Constitution. It won't do." "Yes but they gave it to us when they had the power, now let them take a little of the hot soup which we have had poured down our throats for the last ten years; though it be hot they must take it." [Laughter.] Some men would say make them take it. I say no; let it stop just here. The time is coming, thank God, when it will be in our power to administer the same nauseous medicine to the country parts of the State that they have administered to us, but I do not wish to see it done. What a state of affairs it would be to continue in this great State of New York! What a state of affairs to be transmitted to our children and future generations—the cities fighting the country and the country fighting the cities from year to year! Let us erase these foul blots upon our statute books, and let us resolve to have no more of them to disgrace and defame us. Let it stop just here, sir. Now, in regard to the justice of this commission system, and the motives for its adoption. Let me read you some strong republican testimony of the Hon. Lyman Tremain. I will read it all except the poetry; that I think is bad. [Laughter.] Says this bright and shining republican light at Tammany Hall, in the fall of 1857:

"That you may clearly appreciate the object and purpose of that legislation, you have a right

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to take into consideration the contemporaneous history of the times and the circumstances by which the republican party found itself surrounded. It found itself besieged by hungry swarms of needy adventurers, who were clamorous for their reward. Many of them had hoped that with the election of John C Fremont the national treasury would be under their control, and the patronage of the general government would be used for their benefit. In this hope they were happily disappointed. Their only chance, therefore, was in the proper dispensation of power and distribution of patronage at Albany. The question that presented itself to the republican leaders was, what shall be done for these patriotic soldiers of fortune, and in what way could power be used to crush out the democratic party? On looking over the State, the most desirable point of attack that was discovered was your own great and noble city. The city of New York ought to have been regarded as eminently entitled to the protection and favor by every true son of the State whose name she bears. Rich in her commerce, her enterprise, her wealth and resources, with patronage equal to that of some of our smaller States, with her merchant princes that have contributed to render the name of an American citizen respected and honored wherever the American flag was carried—it could scarcely have been anticipated that such a city should be selected for hostile legislation by the State she had done so much to honor and strengthen. But unfortunately for her immediate interests, yet fortunately for her future fame, New York in the great contest of 1856 had remained faithful to the Constitution, and declared that the Union should be preserved in all its integrity. She had refused to yield before the fierce storm of fanaticism that swept over the North. True to her antecedents, and recognizing no North, South, East or West, but only one common country, she had rolled up a majority of 25,000 for the democratic candidate for President and Vice-President. For this the decree went forth from the republican leaders that she must be humbled—for these reasons it was determined that the patronage and power which belonged to her people should be transferred to the central power at Albany. For this, it was resolved to create a swarm of new officers to manage her affairs and eat out her substance, to invade municipal rights and to crush out her democratic strength. In vain could your devoted city appeal to her accidental masters to spare her this humiliation. The decree was executed, the work was done with all the skill and success that ability, ingenuity and reckless partisanship could accomplish. Your people, in the exercise of their unquestioned rights, had elected a mayor and democratic city government. An act was passed amending your city charter, so as to turn these democratic officers out of office before they had served out one-half their terms. You had a police force consisting, perhaps, of eight hundred officers, the control and appointment of which from the organization of the government, had been exercised by your own authorities; this power was taken from you and transferred to a metropolitan police board consisting of five new commissioners, to be appointed by the Governor and Senate; the whole police force of the city, with the power to move and appoint, and all this vast patronage that was conferred on this board. Four of the five commissioners appointed under the law were republicans, and the fifth was an American. Thus the majority of the board was selected from a political party that contained less, probably, than one-quarter of the electors in the metropolitan police district. But while the power of selecting your commissioners and your police force was thus taken from you, yet the privilege was left that you should foot all the bills for their support. The funds for this purpose are directed to be raised by tax upon the real and personal property situated within the newly created district. So, too, they created at Albany and appointed a board of commissioners of the New York City Hall, but it was left for the people to raise the sum of $200,000 to pay the interest on its cost. An act was passed, too, in relation to your board of supervisors. It is made to consist of only twelve members, who are elected by general ticket, only six names being voted for by each elector, and the six persons receiving the highest number of votes, with the six persons receiving the next highest number of votes composed the board. Thus, although the democratic party may carry nine-tenths of the wards and four-fifths of the popular vote, their right for power is nullified by the presence in the local Legislature of an equal number of members elected by the minority. By the same act the mayor's veto is annihilated, and, notwithstanding this veto, a majority was authorized to pass the act or ordinance vetoed. If this is a salutary principle of legislation it would seem strange it was not applied to Onondaga or St. Lawrence, or other counties where the republicans have majorities in the board. But I need not enlarge upon this subject. It is enough that your attention is drawn to it. For acts of legislation no more arbitrary and oppressive England lost her American colonies, and at another time England's king lost his head. Democrats of New York, we of the interior have heard your appeals to us for aid. Those appeals have met with a cordial response. We sympathize with you in your wrongs, and we have resolved to fight this battle with you, hand in hand, and shoulder to shoulder together, 'sink or swim, survive or perish;' we will stand or fall together."

He left us in eighteen months after that [laughter], and a long and loud shout of joy went up from the democracy when he did so. We rejoiced that such an arch traitor had left the wigwam. [Laughter.] I read these remarks merely as a little authority to show that this is a partisan commission—which I believe has not been fully asserted here before. I was sorry to hear that my friend and colleague [Mr. Murphy] did not say that it was a partisan commission; but at the time of this trouble I believe that he was our resident minister at the Hague, so that he probably knew very little except what he learned from the public press, of what was occurring in the county of Kings or in the city of New York. If the idea was to give us a good non-partisan police there was no necessity whatever of making a police commission, there was no ne-

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cessity of forming a metropolitan police district. The charter of the city of New York, the charter of any city in the State, could be so amended that a non-partisan police could be elected by the inhabitants of the State, but they could not wait until an election should take place. There were too many hungry men hanging on the outskirts of the republican party which had just then been defeated, and they had their police bill drawn up and passed by the Legislature here at Albany, and the commissioners were appointed and they immediately set about appointing their subordinates. I have not a word to say in relation to the brave and efficient men who figure in the metropolitan police. I felt pleased and proud to hear the gentleman from Richmond [Mr. Curtis] say that this was a "great police." It is a great police force. I have had a great deal to do with it officially. I have seen a great deal of its efficiency, and I give it the credit of being one of the best police forces in the world, in some particulars, but in others it is a perfect failure. Its detective system is a most miserable failure. To see the police upon Broadway, to see them escorting the Japanese embassy or any distinguished arrivals, up or down Broadway, one would naturally be impressed with the grandeur of the force and would come to the conclusion that it was one of the finest police forces in the world. And it is for any such purpose. That force is able to quell a mob, too, as rapidly and as well as any police force in London or Paris can do it; but its detective department, I repeat, is a failure, and I think that every one who has any knowledge of the subject will agree with me that there cannot possibly be a greater failure anywhere than the detective branch of the metropolitan police. I have heard and I know of a great many instances in which it has failed. I suppose the great fault of that branch of the metropolitan police force is that its detectives are all known. Those detectives talk and brag of their positions so that every one knows who is a detective and who is not. Now, it is universally conceded by all policemen and by all who know any thing about the organization of an efficient police force that the Austrian police is the best that the world has ever seen. There it is an offense for the detective, a shadow, as he is called, to tell that he is such. He shadows his victim, follows him, traces him, finds out all about him, but when the arrest is to be made it is done by an ostensible officer and not by the detective. In that way detectives live and die in Austria unknown to the people generally. And the Austrian police system is always the same. It makes no difference whether Silesia is a province of Marie Theresa or whether Frederick the Great rules it, neither Frederick the Great nor Marie Theresa makes any change in the police system. It has remained for centuries as it is now. Secret, sudden, efficient and only occasional inklings of its operations become known to the world and that is generally from persons who have been subject to its surveillance. The metropolitan detective system is a failure, and it is so, as I have said, because the detectives go about telling who they are, making friends with thieves and arranging with them to divide the plunder. Why, it would astonish the members of this Convention if I should relate half of what I know in relation to the workings of those detectives. I will give one or two instances. The navy yard in Brooklyn was robbed of nearly $300,000. The purser of the yard was removed by the authorities at Washington. Detectives came on from Washington, and officers came also, I believe, from Philadelphia and Boston, and engaged with other officers in the city of New York in attempting to find out about this robbery. Nothing was discovered, however, until three years had transpired, when it was too late to indict the parties, and then it was proven satisfactorily before a congressional committee that the robbery was instigated by detectives in the city of New York, men whose names I could mention here if it were necessary. It seems that an impression of the key of the navy yard safe had been taken five or six years ago from the room of the purser, who at that time lived at the Mansion House in Brooklyn. That impression of the key had been kept by the thief that had taken it, and in the mean time he had been sent to State prison for some other felony, so that in order to get at this impression they had to get the man pardoned out of State prison at Sing Sing, and they made an arrangement with him that he was to receive a portion of the plunder. That man's name is well known. He was pardoned out and brought to the city of New York, and he, together with other persons, some of them detectives in the city of New York, robbed the safe in the Brooklyn navy yard, and all received certain portions of the money. I will mention another case. The Bethel Bank, in the State of Connecticut. One night the thieves went into the quiet little village of Bethel, in Connecticut, dug away the foundation of the bank, and took away all its money—every thing clean. A reward was offered by the bank, and its president came on to see the detectives in New York, who did not think the reward was sufficient. The reward was made larger. The next day a man came to the head-quarters of the police then in Broome street, with a mysterious black bag containing all the money and effects of the bank. The matter was dropped, and none of them were either arrested or convicted. Another instance. The Concord Bank of Massachusetts was robbed. The bank offered a large reward, but the police thought it was not large enough. But the bank officers were obstinate, and refused to offer a larger one. The case was not "worked up," as it is termed, and was suffered to lay slumbering for nearly three years. Finding that no larger reward could be obtained, the police at last awoke, and one bright summer morning the officers of the bank were sent for; they came on from Concord, and found all their stolen bonds in the hands of the metropolitan police. The detectives said that they found the money and bonds in a glass jar between the low water and high water mark in the Delaware river, in the State of Pennsylvania. For this robbery no one was convicted. Old Mr. Lord, of the city of New York, was robbed of nearly two millions of dollars in bonds. He was very obstinate, and would not offer an immense reward, insisting that the government should "make him good," as he called it. He insisted

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that the government should pay him the amount of his bonds, the numbers and amounts of which he had registered. But there was great delay; he could not get his bonds, nor would the government pay him for them or issue new ones; and after two or three years he concluded to give one hundred and fifty thousand dollars reward. He was told that that was not enough, that two hundred and fifty thousand dollars was the figure. He refused to give that sum, and after some time had elapsed he was told in the street something like this: "If you don't give that figure those bonds of yours will be burned up this day," and Mr. Lord, with tears in his eyes, had to accede to their terms. Why, sir, the detectives of the city of New York live in the most magnificent style imaginable. There are detectives in that city to-day, I am informed, who are worth hundreds of thousands of dollars, and their names can be mentioned when it is necessary. I recollect another case. There was taken mysteriously from the desk of Mr. Leonard W. Jerome over $30,000 in bonds, and after some time, very mysteriously they came back I have before me a list of a few of the many robberies that have taken place recently in Wall street and its vicinity—clear cases of stealing, no forgeries whatever; no cases of hypothecated stock, no breaches of trust, no confidence operations or defalcations, but fair, square robberies, committed by men who are professional thieves, and who do not deny that they are such, and as such not a few are known to the community as well as by the police. In this list there is much matter for reflection—much more that might lead to comment. At or in the following houses mentioned, the moneys named have been stolen from their counters:

Central National Bank,	$69,000
White & Moens,	5,000
Spark,	10,000
Bliss & Co.,	50,000
Mechanics' Bank,	4,000
Belmont,	25,000
Vermilyea & Co.,	10,000
American Bank,	40,000
Bank of Commerce,	25,000
do do	5,000
Union Bank,	5,000
Lyons & Co.,	5,000
Adams Express,	2,000
Bank of North America,	1,000,000

In casting the eye over these figures, the reasonable question that arises to the mind is: was none of this vast amount of stolen cash or bonds recovered? To that I say, yes; there was probably a loss of fifteen per cent. In police parlance, it was pretty well nearly all "worked" back by a sort of paleography that takes time to study, although easy to comprehend. For instance, the million dollars represented stolen was not in greenbacks, but the representation of greenbacks—bonds and stocks, that to the owners were worth that amount, but would only bring to the thief the price of waste paper in Ann street. That stock, bonds and scrip, it is said, all "worked" its way back to the bank, and heavy as the robbery appears, the loss in the end was but a trifle. How it "worked" its way back without an arrest or conviction of the thief, is the question that arises in the reflective mind in spite of attempted repression. It would be impossible to suppose—nay, it would be ungenerous for a moment to presume—that the police would bargain with the thieves to let them go if they would work back the stolen property after a great deal of mystification had taken place, so that they might obtain the reward; and it is just as unreasonable to suppose that a man having the abilities of a great bank robber, if he committed a crime of a grave nature, would give up what he might have stolen to participate in the reward. The thing is utterly *preposterous!* The idea is as repugnant as is that of miscegenation. Besides, the police are now too well learned in their school of instruction by Inspector Leonard not to know that such action would be compounding a felony, one of the easiest rules of the department taught and learned. I know such things cannot be; but this I believe, that there is a *modus operandi* whereby no compounding of a felony occurs, and yet much of that which is stolen in Wall street or its vicinity, after a time like the Wandering Jew, wafts back to the place it left with the mysterious wave of a wizard's hand, Can the police detectives enlighten the public? Thefts and robberies will take place, and often to very large amounts; but at the same time the reasoning mind will expect to see arrests—nay, not only arrests, but also convictions, if only *occasionally*. Of these fifteen robberies alluded to, embracing a loss of one million and a quarter dollars, has there been one conviction? The public are told by the police that these robberies are all committed by a gang of thieves they call the "Boston crowd." They profess to know who commit these robberies, and in the next breath deny all knowledge of their names. That is astonishing, but more astonishing still that none of that Boston crowd have been convicted, even if they have *no name*. Why, Wilkie Collins or Mrs. Braddon ought to come to Wall street if they want the foundation of a solid sensation romance. No Name! The name is not necessary to make an arrest if the felon is known, is it? If a man refuses to give his name he can be tried under the name of Roe, Doe, or any thing else, can he not? Why, if they had said that they knew the men by name, but not by sight, then they could be forgiven for being chary in their arrests, and once in a while a conviction follow—although there is none. Had they made that honest acknowledgment, then they might have been excused from the well known caution with which they act in keeping within the strict letter of the law in all arrests that are made. I would ask, is it true that every principle "fence," or receiver of stolen goods in New York city knows that at a certain loan office he can get the highest price for his goods, and no questions asked? And is it true that the chief of the detective force has a knowledge of said office, and that through that office, property for which rewards are offered is speedily brought to light? Is it true that a certain gentleman lost a diamond breastpin during a grand parado on Broadway, worth $2,000, and that he was advised at the central office to offer a reward for the same, when the locale of the property was already

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known to the dectective? These questions are asked for information. Is it true that a certain judge in New York lost a watch, which was hunted up and returned to him within two days? And is it true that a high official had a friend who lost a watch, and had it returned in an equally short space of time? And is it just as true that a gentleman without any such influence lost a watch, and was told at the central office that its recovery was hopeless that the cases were probably melted up and the works scattered in all directions? Is it true that the detectives of the central office frequent a certain saloon in Houston street, not far from Crosby, and spend hours there, playing cards with thieves and counterfeiters, and this with the knowledge of the chief detective? And is it true that one of these detectives passes counterfeit money himself? Is it true that a quantity of bogus money amounting to about $4,000, was taken by the police at the Carson House, and that the men who made the money and all the material were left behind untouched and for a consideration? The fire grows hotter under the cauldron, and it is even destined to boil still more furiously. Again let the guilty ones stand from under. The time for brow-beating, cant and sophistry is past. The wail of a thousand victims comes up through the corridors and out of room B—that room of general jobs, where legal and illegal bleedings have written in lines of blood their awful chronicles upon the walls. And these find an echo in that double-doored vault in the chief's office, into which the better class of criminals are taken and "worked" to the same great end. How many men have sacrificed their manhood, and how many women have bargained away their virtue there, may never be known. When a coming man invents a process to make these terribly pregnant walls speak and disclose their fearful records, human ears will shrink and human souls recoil at the utterances. That man is coming. Stand from under. Now, this is not a very good detective police, at least. Some remarkable things have been said about the officers of the metropolitan police force; but in relation to those officers and commissioners, I have only to say that I think they are, as a body, fair, high-toned and honorable men; and as to the uniformed police, the patrolmen, I never saw men fight as they fought during those three days of riot and bloodshed in July, 1863, and I do not believe that the soldiers in any of the battles of the rebellion fought more bravely or suffered more, in proportion to their numbers, than the police did on that occasion. Still, sir, they were like chaff before the wind when they met the infuriate mob, and they would never have been able to check the mob had it not been for the armed military force which came from Fort Hamilton, under General Brown, and which finally succeeded in dispersing the rioters. Now, sir, I was sorry to hear this matter discussed in a partisan spirit; and if I have said any thing to-night that has a political aspect [laughter]. I have said it partially in reply to the remarks of the gentleman from Montgomery [Mr. Baker] last night. I was sorry to hear that gentleman speak of Governor Seymour as having aided the rebellion—that old, stale, stereotyped slander. Who saved the capital of this nation when General Lee invaded Pennsylvania in 1863? Was it not the militia of this State, sent on to the scene of action by Governor Seymour; and did not President Lincoln and Secretary Stanton both send to Governor Seymour letters thanking him for his energy and patriotism in thus standing by the nation in its darkest hours? And did not a republican Legislature, the next winter, unanimously pass a resolution in both houses lauding him for such conduct? And yet the gentleman insists on hurling this foul slander forth from this body—insisting, in the face of history, that Governor Seymour aided the rebellion and incited riots in the city of New York. Now, as to the truth of these charges, read these letters and telegrams from Governor Curtin, of Pennsylvania; Secretary Stanton, Governor Seymour and others:

THE PENNSYLVANIA INVASION—OFFICIAL TELEGRAMS.

"BY TELEGRAPH FROM WASHINGTON, June 15, 1863.

"*To His Excellency, Gov. Seymour:*

"The movements of the rebel forces in Virginia are now sufficiently developed, to show that General Lee, with his whole army, is moving forward to invade the States of Maryland, Pennsylvania, and other States.

"The President, to repel this invasion promptly, has called upon Ohio, Pennsylvania, Maryland, and Western Virginia, for one hundred thousand (100,000) militia, for six (6) months, unless sooner discharged. It is important to have the largest possible force in the least time, and if other States would furnish militia for a short term, to be ordered on the draft, it would greatly advance the object. Will you please inform me, immediately, if, in answer to a special call of the President, you can raise and forward say twenty thousand (20,000) militia, as volunteers without bounty, to be credited on the draft of your State, or what number you can probably raise?

"E. M. STANTON,
"*Secretary of War.*"

"ALBANY, June 15, 1863.

"*Hon. E. M. Stanton, Secretary of War, Washington:*

"I will spare no efforts to send you troops at once. I have sent orders to the militia officers of the State. HORATIO SEYMOUR."

DOES THIS SOUND LIKE DISLOYALTY?

"ALBANY, June 15, 1863.

"*Hon. E. M. Stanton, Secretary of War, Washington:*

"I will order the New York and Brooklyn troops to Philadelphia at once. Where can they get arms, if they are needed?

"HORATIO SEYMOUR."

IS THIS DISLOYAL?

"BY TELEGRAPH FROM WASHINGTON, June 16, 1863.

"*To Governor Seymour:*

"The President directs me to return his thanks, with those of the department, for your prompt

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response. A strong movement of your city regiments to Philadelphia would be a very encouraging movement, and do great good in giving strength in that State. The call had to be for six months, unless sooner discharged, in order to comply with the law. It is not likely that more than thirty days' service—perhaps not so long—would be required. Can you forward your city regiments speedily? Please reply early.

"EDWIN M. STANTON,
"*Secretary of War.*"

IS NOT THIS DISPATCH ENOUGH TO SILENCE THIS MOST MALIGNANT SLANDER, AND STOP THE VENOMOUS TONGUE OF THE MOST UNSCRUPULOUS SLANDERER?

"ALBANY, June 15, 1863.

"*Hon. E. M. Stanton, Secretary of War, Washington:*

"We have about two thousand enlisted volunteers in this State. I will have them consolidated into companies and regiments, and sent on at once. You must provide them with arms.

"HORATIO SEYMOUR."

DOES THIS LOOK LIKE TREASON?

"ALBANY, June 16, 1863.

"*Hon. E. M. Stanton, Secretary of War, Washington:*

"Four returned volunteer regiments can be put in the field at once, for three months' service. Can arms and accoutrements be supplied in New York? Old arms not fit for the field.

"J. T. SPRAGUE,
"*Adjutant-General.*"

"BY TELEGRAPH FROM WASHINGTON, June 16, 1863.

"*To Adjutant-General Sprague:*

"Upon your requisition, any troops you may send to Pennsylvania will be armed and equipped in New York, with new arms.

"Orders have been given to the Bureau of Ordnance. EDWIN M. STANTON."

"BY TELEGRAPH FROM WASHINGTON, June 16, 1863.

"*To Adjutant-General Sprague:*

"The Quartermaster-General has made provision for the clothing and equipment of the troops that may go to Pennsylvania. The issues to be made at Harrisburg. You will make requisition for subsistence and transportation as heretofore, for troops forwarded from your State.

"EDWIN M. STANTON."

"BY TELEGRAPH FROM WASHINGTON, June 16, 1863.

"*To Act. Asst. Adjutant-General Stonehouse:*

"The Quartermaster-General has been directed to clothe the volunteers from your State, upon their reaching their destination, and provision has been made for that purpose.

"EDWIN M. STANTON,
"*Secretary of War.*"

"ALBANY, June 16, 1863.

"*Governor Curtin, Harrisburgh:*

"I am pushing forward troops as fast as possible; regiments will leave New York to-night. All will be ordered to report to General Couch.

"HORATIO SEYMOUR."

COMPARE THIS PROMPTITUDE WITH THE DELAY THAT ALWAYS OCCURRED UNDER GOVERNOR MORGAN IN SENDING REGIMENTS FORWARD IN THE FIRST YEAR OF THE WAR?

"ALBANY, June 16, 1863.

"*Hon. E. M. Stanton, Secretary of War, Washington, D. C.:*

"Officers of old organizations here will take the field with their men, and can march to-morrow, if they can be paid irrespective of ordnance accounts. The government would still have a hold upon them to refund for losses.

"JOHN T. SPRAGUE,
"*Adjutant-General.*"

"ALBANY, June 15, 1863.

"*Hon. E. M. Stanton, Secretary of War, Washington:*

"By request of Governor Seymour, who has called me here, I write to say that the New York city regiments can go with full ranks for any time not over three months—say from eight to ten thousand men. The shorter the period the larger will be the force, For what time will they be required? Please answer immediately.

"C. W. SANDFORD,
"*Major-General.*"

"BY TELEGRAPH FROM WASHINGTON, June 16, 1863.

"*To Major-General Sandford:*

"The government will be glad to have your city regiments hasten to Pennsylvania for any term of service; it is not possible to say how long they might be useful, but it is not expected that they would be detained more than three (3) months, possibly not longer than twenty (20) or thirty (30) days.

"They would be accepted for three (3) months, and discharged as soon as the present exigency is over. If aided at the present by your troops, the people of that State might soon be able to raise a sufficient force to relieve your city regiments. EDWIN M. STANTON,
"*Secretary of War.*"

"ALBANY, June 18, 1863.

"*To Hon. E. M. Stanton, Secretary of War, Washington, D. C.:*

"About twelve thousand (12,000) men are now on the move for Harrisburgh, in good spirits and well equipped.

"The Governor says: 'Shall troops continue to be forwarded?' Please answer.

"Nothing from Washington since first telegrams. JOHN T. SPRAGUE,
"*Adjutant-General.*"

"ALBANY, June 18, 1863.

"*To Governor Curtin, Harrisburgh, Pa.:*

"About twelve thousand men are now moving and are under orders for Harrisburgh, in good spirits, and well equipped.

"Governor Seymour desires to know if he shall

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continue to send men. He is ignorant of your real condition. JOHN T. SPRAGUE,
"*Adjutant-General.*"

"BY TELEGRAPH FROM WASHINGTON,
"June 19, 1863.

"*To Adjutant-General Sprague:*

"The President directs me to return his thanks to his Excellency, Governor Seymour and his staff, for their energetic and prompt action. Whether any further force is likely to be required will be communicated to you to-morrow, by which time it is expected the movements of the enemy will be more fully developed.
"EDWIN M. STANTON,
"*Secretary of War.*"

ANOTHER COMPLIMENT FROM "HONEST OLD ABE." [Laughter.]

"ALBANY, June 20, 1863.

"*Hon. E. M. Stanton, Secretary of War, Washington:*

The Governor desires to be informed if he shall continue sending on the militia regiments from this State. If so, to what extent and to what point. J. B. STONEHOUSE,
"*Act'g Ass't Adjt.-General.*"

"BY TELEGRAPH FROM WASHINGTON,
"June 21, 1863.

"*To Act'g Ass't Adj.-General Stonehouse:*

"The President desires Governor Seymour to forward to Baltimore all the militia regiments that he can raise. EDWIN M. STANTON,
"*Secretary of War.*"

"BY TELEGRAPH FROM HARRISBURGH,
"July 2, 1863.

"*To His Excellency, Governor Seymour:*

"Send forward more troops as rapidly as possible. Every hour increases the necessity for large forces to protect Pennsylvania. The battles of yesterday were not decisive, and if Meade should be defeated, unless we have a large army, this State will be overrun by the rebels.
"A. G. CURTIN,
"*Gov. of Penn.*"

"NEW YORK, July 3, 1863.

"*To Governor Curtin, Harrisburgh, Pa.:*

"Your telegram is received. Troops will continue to be sent. One regiment leaves to-day, another to-morrow, all in good pluck.
"JOHN T. SPRAGUE,
"*Adjutant-General.*"

The gentleman from Montgomery [Mr. Baker] knows that Governor Seymour said nothing on the occasion to which he refers which a fair, impartial man could take the least exception to. What did the Governor say? What were the treasonable words used in his Fourth of July oration in New York? Why, he made a remark during a long speech on the 4th of July, 1863, "that public opinion sometimes was indicated by a mob." Is this a new idea to the gentleman? It is a truism that has been asserted in every language and in every clime. Since the dark ages, every change of government has been indicated by mobs. The American revolution was inaugurated by the tea riot in Boston—a mob. Like many citizens of this nation, Governor Seymour had witnessed blundering, miserable management at Washington for two or three years. He saw that the Chief Executive of the nation imagined that he was a cut-out general from the start, and that he had been born and reared expressly for the purpose of freeing the slave and conquering the South. That Chief Executive had plans of battle for General McClellan, and plans of battle for General Grant, and for all his generals. He wanted General McClellan to go near enough to Richmond to just throw shells into it. (See President Lincoln's letter to General McClellan in published report.) He had plans of battle for General Grant at Vicksburg, and in a letter which he wrote a few days after that victory, he apologized to General Grant, saying that he had had a plan and the general had had a plan, and that he was very glad to see that the general's plan was the best. Governor Seymour, I say, like every other citizen, saw this blundering and mismanagement, and his speech at the Academy of Music in the city of New York, July 4, 1863, was made with reference to such mismanagement at Washington. Why, sir, I have the authority of Mr. Greeley for saying that the blundering generalship that we had in the early part of the war caused this country 250,000 lives. There was general dissatisfaction throughout the country. Thousands of millions of money had been spent; families had lost their fathers and brothers and sons, and the sacrifices had been made with no good result for the nation; and, to cap the climax, just about that time, the authorities at Washington endeavored to fix upon us an onerous and unjust draft. And Governor Seymour was simply warning the authorities at Washington to beware or such conduct would bring evil consequences upon our unhappy country. No gentleman here can say that that draft was not onerous and unjust, because the republican Legislature of this State, of 1864, when Governor Seymour had succeeded in getting our quota reduced six or eight thousand, passed a unanimous vote of thanks to Governor Seymour for so reducing it and stopping the nefarious draft. The Legislature, April 16, 1864, passed unanimously the following resolutions:

"*Resolved*, That the thanks of this House be, and are hereby, tendered to His Excellency Governor Seymour for calling the attention of the general government at Washington to the errors in the apportionment of the quota of this State, under the enrollment act of March 3, 1863, and for his prompt and efficient efforts in procuring a correction of the same.

"*Resolved*, That the Clerk of this House transmit to the Governor a copy of this report and resolutions.

On the occasion of the riots referred to in this debate, Governor Seymour was called to the city of New York to quell them, and he did so. All must remember his two patriotic proclamations on that occasion. I will read them:

FIRST PROCLAMATION OF GOVERNOR SEYMOUR.

"*To the People of the City of New York:*

"A riotous demonstration in your city, originating in opposition to the conscription of soldiers

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for the military service of the United States, has swelled into vast proportions, directing its fury against the property and lives of peaceful citizens. I know that many of those who have participated in these proceedings would not have allowed themselves to be carried to such extremes of violence and of wrong, except under an apprehension of injustice; but such persons are reminded that the only opposition to the conscription which can be allowed is an appeal to the courts.

"The right of every citizen to make such an appeal will be maintained, and the decision of the courts must be respected and obeyed by rulers and people alike. No other course is consistent with the maintenance of the laws, the peace and order of the city, and the safety of its inhabitants.

"Riotous proceedings must and shall be put down. The laws of the State of New York must be enforced, its peace and order maintained, and the lives and property of all its citizens protected at any and every hazard. The rights of every citizen will be properly guarded and defended by the chief magistrate of the State.

"I do therefore call upon all persons engaged in these riotous proceedings to retire to their homes and employments, declaring to them that unless they do so at once I shall use all the power necessary to restore the peace and order of the city. I also call upon all well disposed persons, not enrolled for the preservation of order, to pursue their ordinary avocations.

"Let all citizens stand firmly by the constitutional authorities, sustaining law and order in the city, and ready to answer any such demand as circumstances may render necessary for me to make upon their services; and they may rely upon a rigid enforcement of the laws of this State against all who violate them.

"HORATIO SEYMOUR,
"*Governor.*"

SECOND PROCLAMATION OF GOVERNOR SEYMOUR.

"WHEREAS, It is manifest that combinations for forcible resistance to the laws of the State of New York, and the execution of civil and criminal process, exist in the city and county of New York, whereby the peace and safety of the city and the lives and property of its inhabitants are endangered; and

"WHEREAS, The power of the said city and county has been exerted, and is not sufficient to enable the officers of the said city and county to maintain the laws of the State and execute the legal process of its officers; and

"WHEREAS, Application has been made to me by the sheriff of the city and county of New York to declare the said city and county to be in a state of insurrection; now, therefore,

"I, Horatio Seymour, Governor of the State of New York, and commander-in-chief of the forces of the same, do, in its name and by its authority, issue this proclamation in accordance with the statute in such cases made and provided, and do hereby declare the city and county of New York to be in a state of insurrection, and give notice to all persons that the means provided by the laws of this State for the maintenance of law and order will be employed to whatever degree may be necessary, and that all persons who shall, after the publication of this proclamation, resist, or aid or assist in resisting, any force ordered out by the Governor to quell or suppress such insurrection, will render themselves liable to the penalties prescribed by law.

"HORATIO SEYMOUR."

This is the only occasion that ever a Governor has declared New York city in a state of insurrection. How different with the rural districts? Almost every Governor, from Governor Seward to Governor Fenton, has annually declared some one or more counties in this State in insurrection against its laws. I refer to the many anti-rent troubles. A worthy gentleman who now occupies a position on this floor, and who was at that time mayor of the city, asked the Governor's aid in this matter. The riot had already raged for two or three days. There was a great concourse of people in the City Hall park, and I believe that it was at the instigation of the honorable gentleman to whom I have referred [Mr. Opdyke] that Governor Seymour addressed the crowd in front of the City Hall—was it not, sir?

[Mr. Opdyke shook his head.]

Mr. SCHUMAKER—I thought it was, sir. I was so informed. I will give the gentleman my authority. Senators Tweed and Cornell and others told me that they were present when the gentleman from New York [Mr. Opdyke] requested Governor Seymour to go out and address those gentlemen—I call them gentlemen, the Governor called them "friends." [Laughter.] I was there in Broadway at the time, not connected with the metropolitan police, but passing up and down to see to what extent the riot had gone, and I saw the crowd in the park and went over there and saw Governor Seymour addressing them, and I tell gentlemen that a more orderly gathering of people I never saw in the city of New York in my life at any political meeting. I could see no rioters there. They were evidently terror-stricken men—men who had wandered down from different parts of the city to the neighborhood of the City Hall for the purpose of seeing when this bloodshed and riot was to be stopped. I know something of men's faces, and to me the faces of those men had that appearance. They did not look, as the gentleman here to-day said they did, like returned soldiers and vagabonds; they looked like men who had the anxiety of fathers and brothers, like frightened citizens who had gone to the City Hall as the most natural place to find protection. They heard Governor Seymour. He addressed them as "friends." That, it appears, was a great offense. It would seem from what has been said here as if the Governor should have said, "You cursed scoundrels, what are you doing here?" Because there had been a riot in New York the Governor was to take it for granted that the quiet men before him were rioters, on the principle of the Irishman at Donnybrook fair, "wherever you see a head hit it." But Governor Seymour took another course. He quietly addressed those citizens, and they quietly went away, and I defy any gentleman to point out a single man of that crowd who committed any

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violence either before that time, at that time, or after that time.

Mr. SEAVER—Will the gentleman from Kings allow me to ask him a question?

Mr. SCHUMAKER—Yes, sir.

Mr. SEAVER—I merely wish to ask the gentleman if he believes there was a riot in New York at all in 1863? [Laughter.]

Mr. SCHUMAKER—Yes; I know there was; I saw it. Now will the gentleman from Franklin [Mr. Seaver] permit me to ask him a question?

Mr. SEAVER—Yes, sir.

Mr. SCHUMAKER—Why do you ask me such a very foolish question? [Laughter.] If the gentleman is deaf I excuse him [laughter], for I just said that I saw the riot and that the metropolitan police fought those rioters as courageously as ever did volunteers of our army fight the enemy. I say so again, sir. They astonished me. They went forward with reckless bravery, and seemed to be "chawed up," as it were, by the masses of rioters, who fell upon them with shovels and tongs and spikes and pistols. I saw that riot, sir; I saw nearly every thing connected with it, but the "white horse," [laughter] which was mentioned in that description which was read by the gentleman from New York [Mr. Hutchins] yesterday. The Virginian who was mounted on that "white horse" was a miserable drunken shuyster from about the Tombs. That is the reason I asked the gentleman yesterday what he was reading from. He told us that the rioters were the vanguard of Lee's army; that the men and women who were afraid their fathers and husbands would be drafted, and drafted unfairly, were the vanguard of Lee's army, led on by a "Virginian Andrews" on a white horse. [Laughter.] So far as I recollect, nothing was ever done with Andrews afterward. By universal consent, he was accounted a poor miserable fellow, not worth minding. He was afterward pulled out from under a bed in a state of beastly intoxication, and I do not think that he was even sent to State prison, but only to Blackwell's Island. I doubt if even that was done. I do not pretend to remember that fact exactly, but I thought he was considered of no account at all, and the first time that I have seen him loom up in these large proportions is in this picture drawn by the gentleman from New York [Mr. Hutchins] in which he appears mounted upon a big "white horse." I have made these remarks about that crowd in justice to Governor Seymour; and I will add that I was informed by Governor Seymour about that time, that he had been asked by Mr. Opdyke to go out and address those men; and Mr. Tweed has told me that he was present when Mr. Opdyke asked Governor Seymour to go out and address the crowd. I say this because I am fair enough to say what I mean, and to give my authority when they make no objection. Now, we want this Constitution put in such shape as that there can be no misunderstanding it; so that no "metropolitan district" can be formed hereafter by the Legislature, and the authority of our local officers nullified and destroyed. We want the Constitution made plain on that point. We want the Constitution fixed so that when we have aldermen and mayors they will be such in reality, otherwise we do not want them at all. What is the use of supervisors or other county or town officers if the Legislature can put three or four counties together and appoint a commission to take the place of those officers. There is no reason for that. It is not necessary. I say to my venerable friend from Troy [Mr. M. I. Townsend] that it is not necessary to have that state of things to have good order in the city of Troy. Let the charter of Troy be amended so as to secure a non-partisan police. Let there be a police force with just as many republicans as democrats, and be sure to stick in an American here and there.

Mr. M. I. TOWNSEND—They were all "stuck in" with the democracy.

Mr. SCHUMAKER—Ah! indeed; it was different down our way. I know that when this metropolitan police was organized, it was under the control of the men of the torch and the dark lantern, and most of the old know nothings were put into it—put in by hundreds—all gobbled up by the republicans They made very good policemen, some of them. The only difficulty was that when they met an Irishman they wanted to club him. [Laughter.] The metropolitan police of 1857 was a perfect hotbed of know nothingism, of all descriptions and kinds, and most of the sergeants, captains and other officers belonged to that old worn-out party, which expired about the days of Fremont and Jessie. [Laughter.] But I say to the gentleman from Rensselaer again, you can have a non-partisan police in Troy without this district arrangement, and you can have good order there. The Constitution gives the sheriff authority to call upon all the people in case of necessity, even so far down as Stephentown [laughter], and even to call out the military force if necessary. Why, is not that enough? It has been enough for us in Brooklyn. The police have never quelled a riot there. We have had a good many riots in Brooklyn. We had the angel Gabriel riots in 1854. [Laughter.] We had the know nothing riots, where they attempted to burn two or three Catholic churches. We had the Atlantic dock riots. In those cases the sheriff called out a regiment or two, and that was the end of it. And that is the right way to put down a riot. It is wrong to put policemen where they were put in the city of New York. It is wrong to put policemen with only clubs in their hands against rioters with shovels and muskets. It is the military that should be put to face and disperse rioters. My friend from Richmond [Mr. Curtis] said in relation to our Legislature that it should not be compared to the government of the irresponsible Emperor of the French, because there were in it "honest and conscientious" men from all parts of the State. Now, I do not wish to make the assertion myself, but in relation to the Legislature which passed the metropolitan police bill, I have an authority which ought to be acceptable to gentlemen upon the other side of this question. Hon. A. M. Clapp, the editor of the Buffalo *Express*, a republican paper (who was the republican candidate for Secretary of State in 1857, and who was defeated by my friend Mr. Tucker, whom I see before me), said:

"It will be known throughout all time as the

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infamous Legislature of 1857; that the odor which came from that Legislature while it was in session and afterward was more pestilential and deadly than the miasma which arose from the poisoned valley, and the question was not, 'Is your bill just or equitable?' but 'What will you give? What is the highest price?'"

And he ends his article by saying that that Legislature was "a nest of thieves and plunderers." I think that is about as bad language as that which has been used here by the gentleman from New York [Mr. Hutchins], and the gentleman from Troy [Mr. M. I. Townsend], in relation to my constituents. [Laughter.] Indeed, there could hardly be any thing worse said about any body than what was said by Hon. Almon M. Clapp, of the Legislature of 1857. The gentleman from New York [Mr. Hutchins], in his very elaborate arguments, said that the street commissioner's office and the departments in the city of New York were corrupt, and it was exceedingly funny when he announced with virtuous indignation that the officers and employees of those departments had at least two months of their salary taken from them annually for political purposes. Was that news to him? Was it news to any one who knew any thing about politics in the city of New York? Why, it is part of the discipline of both parties that political officers should help pay the necessary expenses of a political campaign. It always has been so and always should be so. Why, this great police organization, which the gentleman eulogizes, bought a house and lot for its president, General James W. Nye, by assessing its members. Every one must remember this; it is part of the history of our police, and every newspaper in our vicinity poured out "vials of wrath" on the swindle, but General Nye was too much of a gentleman to be affected by any thing that the newspapers said, and permitted the assessment to go on, and a deed was made out to Mrs. General Nye for a house and lot; and they now always nip a little off the salaries for two or three months for political purposes. Indeed, the State republican central committee, of which the gentleman has always been a member, and has often been chairman, keeps that system going all the time. And here again, I do not make this statement simply upon my own authority. I have the authority of a republican very high in this State, and one whose word, I think, will scarcely be doubted in the city of Albany. I will read what he says in relation to the State central committee:

Mr. AXTELL—Who wrote that?

Mr. SCHUMAKER—Thurlow Weed. [Laughter.] He says:

"During the last few years the republican State committees have been permanent institutions. They consist of a battalion of enterprising gentlemen from various parts of the State, who live at first-rate hotels during the canvass, and repair to Albany, taking apartments at the Delavan House, for a winter campaign.

"In addition to fabulous sums of money raised and squandered by these 'State committees' during a canvass, they continue their exactions and expenditures during the year. There is no interval or let up to the demands of these political horse leeches. Before and after an election and all through the year, their cry is 'give,' 'give.'

"But the worst remains to be told. While thus plundering, they are ruining the republican party. Under their management, since 1864, a stable majority of sixty thousand has not only been sponged out, but we are left, by the canvass of 1867, in a minority of fifty thousand.

"We submit, therefore, whether 'republican State committees,' as now constituted, are not quite too expensive; whether we are not paying 'too dear' for such 'whistles,' and whether some gentlemen, who keep going 'round with the hat,' should not be informed that their little game is 'played out.'"

Mr. HAND—Will the gentleman allow me a question?

Mr. SCHUMAKER—Yes, sir.

Mr. HAND—Does the gentleman really believe that the gentleman whose language he is quoting [Thurlow Weed] understands that subject? [Laughter.]

Mr. SCHUMAKER—Well, I don't know. You have trained with him longer than I have—what have you to say about that? [Laughter.] I never was a high private in republican ranks. I never belonged to that party, and I think it is extremely modest for a man who has grown old as a soldier in the same party with him to ask such a question of me. [Laughter.]

Mr. HAND—When he [Mr. Weed] became so bad as to be intolerable he went over to you,

Mr. SCHUMAKER—He never came over to us. He was the founder of your party, and is now one of its leaders, and edits the only journal that openly advocates your favorite, Gen. Grant, for the presidency. I don't know whether that statement of Mr. Weed's is true or not, but I believe it is, for I know the republican central committee assessed every notary public in the State and every postmaster, and one poor postmaster in Erie county sold his only cow to pay the assessment of fifty dollars last fall. I merely cite it as republican evidence of the doings of the State central committee.

Mr. AXTELL—Not at all.

Mr. SCHUMAKER—Is he not a republican? You cannot place him anywhere else. You cannot read him out of the party. That must be done by some higher official than my friend from Clinton. He has always pretended to be a republican, and I never heard it questioned before. The celebrated correspondence of "T. W." and "H. G." ought to settle that fact. "T. W." heads one wing of the party for General Grant, and "H. G." heads the other wing for Judge Chase. I believe it was once rumored about that Raymond, Weed & Co., were going to support a man called Japanese Pruyn who was once very foolishly put on the democratic ticket for Lieutenant-Governor, but neither of them ever did so. If any such arrangement was ever made, which I very much doubt, it was never carried out, for the only vote that candidate ever got from any other party than the democratic was his own [laughter], and after the election he went back to the republican camp [laughter], where he was received with

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open arms by its leaders, Weed & Co. The republicans are welcome to him—he was a dead weight upon us—and the Lord deliver us from such converts. We never want to see the light of his countenance in our camp again. He was rank poison to us. [Laughter.] In concluding my remarks, I would say, Mr. Chairman, that this police commission—to return to that branch of the subject—has been a pretty expensive affair for the city of churches. We do not require much of a police there. But the Legislature paid no attention to the remonstrances of the people of Brooklyn in relation to being annexed to the city of New York. They did not listen to our cry. They made us pay $300 more per head for our policemen, although the policemen we previously had, who received a salary of $500, were satisfied with the payment they got, but they increased our expenses from $137,000 in 1857 to nearly half a million in 1867. Now, that I say, as a citizen of Brooklyn, was entirely unnecessary, I say that we never asked for it; and, although they appointed us a police commissioner from Brooklyn (an unexceptionable gentleman, Mr. Stranahan), I say that the expense was unnecessary and uncalled for in every particular. Previous to that law, men were running from every direction for appointments on the old police, although the pay was only $500 a year. But the Albany Legislature of 1857, which Mr. Clapp calls such horrible names, said, inasmuch as you, in your liberality, give large democratic majorities, we will raise your expenses, and they did raise them in the matter of the police over $200,000 the first year, and we have to stand it. The highest court decided against us in testing the constitutionality of the law, and we have submitted quietly to it ever since. We submitted to the laws, but still hoped that the "sober second thought" would some day come, when the people of this State would see the folly and unfairness of treating us, their neighbors and brothers, as conquered provinces. Last summer it did seem almost certain that this body would be firm and decided, and put its seal of condemnation upon all such laws. But the occurrences of the last few days have driven all hopes out of my mind as to such a change of affairs. A powerful lobby has been in attendance here from all parts of the State, particularly from New York, consisting of delegations of the Union League and the so-called citizens' committee, all clamoring for the continuation of these commissions. The party whip has been cracked about the heads of the leaders of the party in the majority in this body, and they must obey their masters' bidding. The friends of free government have nothing to expect from here. It was not my intention to have taken up so much of the time of the committee upon rising, and I apologize for so long trespassing upon you my unstudied and impaired views.

Mr. OPDYKE—Mr. Chairman, Governor Seymour having been referred to in connection with acts of mine, I ask to be permitted to make a few remarks in explanation of my own conduct in connection with his during the riots. Since we have had so much in reference to the riots of July, 1863, I think we had bettor have the whole of it, that we may understand the matter fully. I have already endeavored to do ample justice to the head, and to the rank and file of the metropolitan police force; but, sir, as the gentleman from Kings [Mr. Schumaker] has well said, faithful as they were, and earnestly as they labored, their labors would have been unavailing but for the aid of the slender military force that we were fortunately through great effort enabled to unite with them. When the riots broke out on Monday morning, the news came to my office about a quarter before ten o'clock. I immediately sent a message to the police commissioners, and to General Sandford and General Wool, asking a conference. I found myself utterly without power; the law creating the police department had not only excluded from that board the mayor of that city, but it had also taken from him and transferred to the police commissioners, as the framers of that law supposed, the exclusive power to call out the military force for the suppression of riots. My legal friends, however found in searching the statutes of the State, an old law in relation to the militia of the State, which conferred upon the mayor of cities, and sheriffs of counties, authority to call out the militia to aid in suppressing riots. The head of the police commissioners came to my office. I asked him to join me in a requisition on General Sandford to call out the State militia. He declined. I then made the requisition myself in virtue of that old law, although I had serious doubts whether it had not been superseded by the act creating the metropolitan police; but in view of the urgent necessity of the case I did not hesitate a moment to assume the responsibility. Gen. Wool, with great alacrity, sent to all the fortifications in the harbor, and mustered all the forces he could. He brought them to the city, and was about to put them under the command of an official of the United States government, who, in my judgment, did not possess the requisite military skill, courage and public confidence to perform the duty satisfactorilly. I therefore urged him to substitute General Brown, which he did. I immediately telegraphed to Governor Seymour, who was then sojourning in New Jersey, and asked him to authorize us, in the absence of nearly all our organized military forces, to call the State national guard from adjoining counties. I think I telegraphed him twice, but got no response. And, in conjunction with General Wool, we sent telegrams to every quarter where we deemed it possible that military aid could be secured; but all our efforts were of little avail. Up to 12 o'clock on the night of the first day of the riot we had succeeded in collecting little more than eight hundred men of all arms: I then telegraphed to Governor Seymour, advising him to come to the city, in the hope that through his authority we should be able to get more military force. I telegraphed, also, to the Secretary of War, informing him of the condition of things, and suggested that some of our regiments be returned, if possible, from the seat of war. Governor Seymour arrived on Tuesday morning, and came to my rooms at the St. Nicholas Hotel, where he remained with me during the entire riots, except that soon after his arrival he accom-

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panied me to the City Hall, where it was not possible for us to accomplish any good, as the riots were going on in the upper part of the city, and most all of the murders and devastations of property were in that part of the city. But many evil disposed persons had gathered about the City Hall, and the newspaper offices were threatened. My friend from Kings [Mr. Schumaker] could not have extended his view very far from the steps of the City Hall or he would not have stated that the mob were so peaceably disposed. He might have seen, by extending his vision, many scenes like this: peaceable colored men crossing the Park or walking along the streets attacked by crowds of assailants and fleeing for their lives.

Mr. SCHUMAKER—I only spoke of the time when Governor Seymour was there.

Mr. OPDYKE—Perhaps at that very moment there might not have been any thing of that kind. But immediately after he was there, those scenes did transpire, and on the same day a newspaper office, fronting the City Hall, was attacked. I now come to the point of my advising the Governor to address the crowd. I shook my head when my friend from Kings [Mr. Schumaker] made the remark. And, on reflection, while I have not the slightest doubt that I concurred in recommending it, I am quite sure that others suggested that he should address the crowd. My colleague, Mr. Hutchins, who was present, now informs me that my recollection is correct. But the terms in which he should address them, or what words of endearment he should use [laughter] I certainly had nothing to do in suggesting; nor had I any share in framing the speech he made to them. He left very soon after, in a carriage with some friends, to go where the riots were taking place, and then returned to the St. Nicholas Hotel, where he remained during the riots. It was not until the military under General Brown, who was second in command to General Wool, was united to the police force, that they succeeded in withstanding and repelling the rioters, who outnumbered ten to one the organized force against them. I also urged the police commissioners to arm their force. They said they would not do so without the sanction of the Governor. I offered to take the responsibility of making the requisition for the arms, and furnishing them. But they declined it. When Governor Seymour arrived, he very cheerfully and promptly acquiesced in the suggestion, and gave requisitions for arms, which were taken to the police head-quarters; but as the military strength was increasing, it turned out there was no occasion for the police to use them, though they could have been used very effectively at an earlier stage of the riot. I mean to be entirely just to Governor Seymour in regard to his conduct during the continuance of the riots, though he has not been just to me. Prior to the riot he made a serious misrepresentation of my official conduct in a message to the Legislature, of which I asked a public retraction. He very frankly and promptly gave a verbal retraction, with a promise of giving one for publication. After patiently waiting week after week, and month after month, during which time that promise was more than once renewed, but never performed, I abandoned the effort. It has never been performed. But I have this to say of Governor Seymour: he was surrounded during the riot by many bad advisers —scores of them—on some occasions I think there were one hundred in my room — most of them urging him to exert his influence to withdraw the military resistance to the rioters, and to endeavor to quiet them by moral suasion. In opposition to them, nearly every city official, all of whom except myself were democrats, earnestly counseled otherwise, and indignantly condemned the advice that he was receiving from his more numerous friends. And while I thought, sometimes, he was vacillating, and disposed to interfere in a manner which, in my judgment, would be disastrous to the best interests of the city, it turned out that my apprehensions were ungrounded. He never yielded to these bad counsels, but, to the end, stood firm. Every thing that it was possible for him to do was done, to aid in the suppression of the riots. At my instance he gave requisitions for arms to scores, and even hundreds of private citizens, whose warehouses or dwellings were threatened. He did not hesitate in a single instance, whenever I vouched for the respectability of the applicants for arms. On one occasion, I think it was Wednesday afternoon, a conference was to be held among the officials at the police head-quarters to determine on the line of action and defense during the afternoon and evening. My friend, Mr. Hutchins, was there at the time, and will confirm the truth of what I say. Governor Seymour came in with at least twenty of his political and personal friends, and among them were several gentlemen who were very much excited, because, as they declared, the troops under the command of General Brown, in the Twentieth ward, were shooting down innocent and peaceable citizens, who had congregated from mere curiosity, under the excitement that was existing, and that they were not rioters at all. General Brown asked if they had not been firing buildings and barricading the streets. They answered in the affirmative, but said it was in self-defense. The General replied if this was not rioting he did not know what was. These gentlemen urged that Governor Seymour should recall the troops, and they pledged themselves that they would disperse the crowd by peaceable means and moral suasion. The friends of Governor Seymour were urgent that he should exercise his military authority as Governor of this State and commander-in-chief, to make General Brown withdraw his troops. The Governor very properly felt, I have no doubt, that he had no authority to interfere, at all events he did not interfere. The police commissioners also joined in urging General Brown to withdraw his troops. I was the only one to counsel General Brown to turn a deaf ear to any such advice, because all history proves that the only way to put down a riot as formidable in its proportions as this, was to shoot it down. He replied, with several expletives which I will not repeat, that I need not give myself any uneasiness, that whatever the Governor, or any friend of his, or any one else might say, no troops under his command should ever retire before a mob unless driven back. That spirit and determination of General Brown had much to do in inspiriting all in au-

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thority to aid in resisting the force of the rioters and in putting them down. Though, on many occasions, Governor Seymour was advised to interfere, he never did interfere, and his conduct during those riots met my entire approval. I have stated these things to show that while the police force did all that it was possible to do, that unaided, they would have been utterly unable to suppress the riot without the hearty co-operation of the military force. That force was mainly under the control of General Wool. He had brought it to the relief of the city at my request; he considered himself under my immediate direction and desired my presence and advice throughout the riots.

Mr. BAKER—I desire to explain to the gentleman from Kings [Mr. Schumaker] who probably did not hear what I said last evening in reference to the speech of Governor Seymour, that I referred to the speech he made on the fourth of July, in the Academy of Music, in the city of New York, and not the speech he is said to have made to the rioters.

Mr. AXTELL—I move that the committee do now rise, report progress, and ask leave to sit again.

The question was put on the motion of Mr. Axtell, and it was declared carried.

Whereupon the committee rose, and the PRESIDENT resumed the chair in Convention.

Mr. RUMSEY, from the Committee of the Whole, reported that the committee had under consideration the report of the Committee on Cities, had made some progress therein, but not having gone through therewith, had instructed their chairman to report that fact to the Convention, and ask leave to sit again.

The question was put on granting leave, and it was declared carried.

Mr. SILVESTER—I move that the Convention do now adjourn.

The question was put on the motion of Mr. Silvester, and it was declared carried.

So the Convention adjourned.

THURSDAY, January 30, 1868.

The Convention met pursuant to adjournment at ten o'clock A. M.

Prayer was offered by Rev. EDWARD SELKIRK.

The Journal of yesterday was read by the SECRETARY and approved.

Mr. GRAVES—I desire to give notice that I shall, at the proper time, move to reconsider the vote by which the eleventh section of the article reported by the Committee on the Judiciary, as amended and reported from the Committee of the Whole was adopted; also to reconsider the vote by which the seventeenth section of the same report was adopted; also to reconsider so much of the eighteenth section of the same report as denies to the board of supervisors the power to fix the salary of the county judge; also to reconsider the sixteenth section of the same report in relation to fixing the tenure of office of the supreme court judge at fourteen years; also the second section of the report of the Committee on the Organization of the Legislature which fixes the official term of Senators at four years; also section 5 of the same report which fixes the salary of the members of the Legislature at one thousand dollars; also section 8 in the report of the Committee on Canals as amended in Committee of the Whole; also section seven in the report on the Governor, etc., or so much of it as forbids the increasing or diminishing of his compensation during his term of office; also section 13 of the report of the Committee on the Power and Duties of the Legislature, which denies the right of trial by jury, under said section, to claimants against the State.

The PRESIDENT—The Chair would inform the gentleman from Herkimer [Mr. Graves] that the notices which he gives are not in order until the vote by which the entire article was adopted shall be reconsidered.

Mr. GRAVES—I so understood it, and I gave the notices with that view.

The PRESIDENT—The notice which the gentleman has given is for a motion to reconsider the separate sections. The notice, to be in order, must be for an amendment to reconsider the articles which have been adopted.

Mr. ALVORD—In order to obviate any difficulty in this regard, I gave notice yesterday morning of a motion to reconsider every article which we have adopted.

Mr. HATCH—We do not thank the gentleman, and I do not propose to be "flopped" by it either. I give the following notice:

The SECRETARY proceeded to read the notice as follows:

Mr. Hatch gives notice that he will at some future day move to reconsider the vote by which the article on finance was adopted, in order that it may be amended by the addition of the following:

SEC. 6. The Legislature shall not lease or otherwise dispose of any of the canals of the State, but they shall remain the property of the State and under its management forever. After the payment of all the debts for which the canal revenues are now pledged, and after all advances with interest thereon, heretofore or hereafter made for canal purposes, shall be repaid, no more or greater tolls shall ever thereafter be imposed, charged or levied upon property transported on the canals than shall be sufficient for ordinary repairs and further necessary improvements.

Mr. M. H. LAWRENCE—I wish to call up a resolution offered by Mr. Prosser, to reconsider the vote by which the section of the financial article postponing the building of the Capitol for ten years was stricken out.

The PRESIDENT—The Chair would inform the gentleman from Yates [Mr. M. H. Lawrence] that the vote by which that article was adopted must first be reconsidered before his motion can be entertained.

Mr. M. H. LAWRENCE—As I understand the resolution, it was to reconsider that vote.

The PRESIDENT—The resolution will be read.

The SECRETARY proceeded to read as follows:

"Mr. Prosser moved to reconsider the vote on the motion of Mr. Harris to strike out section 14

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of the report of the Committee on the Finances of the State, as reported by the Committee of the Whole, in words the following:"

The PRESIDENT—Under the ruling of the Chair, the resolution is not now in order.

Mr. FOLGER—I give the following notice.

The SECRETARY proceeded to read the notice as follows:

Mr. Folger gives notice that he will at some early day move to reconsider the vote by which the proposition was defeated to continue in office the present judges of the court of appeals.

The PRESIDENT—The Chair holds that that article on the judiciary has not been adopted. It was simply referred to the Judiciary Committee, with power to report complete.

Mr. MURPHY—I would like to inquire of the Chair whether the notice to reconsider an article is also needed to reconsider all parts of the article.

The PRESIDENT—The Chair holds that if the Convention shall reconsider the article, the Convention will be under the order of amendments generally, and that if an amendment shall be offered which has been offered heretofore, and been rejected, or the same in substance, then the vote by which that section was adopted or rejected must be reconsidered.

Mr. MURPHY—I would inquire if, in such a case, three days' previous notice is necessary?

The PRESIDENT—The Chair holds that three days' notice is necessary.

Mr. A. LAWRENCE—I desire to give notice that, at some future time, I shall move to reconsider the vote by which the article on education was adopted.

The PRESIDENT—The notice will be received and entered by the Secretary.

Mr. E. BROOKS—I offer the following resolution, relating to the order of business.

The SECRETARY read the resolution as follows:

Resolved, That the debate in Convention upon the article relating to cities be limited to speeches of ten minutes, and that no delegate be permitted to speak longer than that time upon any one question, and that the final vote upon the article be taken to-morrow at twelve o'clock, unless sooner disposed of.

Mr. PROSSER—Have we passed notices? I have not heard the Chair announce resolutions.

The PRESIDENT—The Chair thinks we have passed notices, but the Convention will recur to that order of business if it was not so understood.

Mr. PROSSER—I desire to give notice that I shall, at some early day, move to reconsider sections 2, 3 and 4, of the report of the Committee on the Finances of the State, and if necessary, for that object, I shall move to reconsider the whole article.

The PRESIDENT—The notice is received.

Mr. HARDENBURGH—I do not exactly understand the ruling of the Chair; I desire to reconsider the vote by which the eighth section of the judiciary article was adopted.

The PRESIDENT—That article not having been adopted, no vote having been taken upon that question, the gentleman may give notice of a motion to reconsider the section to which he refers.

Mr. HARDENBURGH—Then I give that notice.

The PRESIDENT—The notice is received and will be entered.

The PRESIDENT announced the question on the adoption of the resolution offered by Mr. E. Brooks, in reference to debate on the article on cities.

Mr. CHESEBRO—I move to amend the resolution by fixing the hour of taking the vote at seven o'clock this evening.

Mr. OPDYKE—I hope that neither the original motion nor the amendment of the gentleman from Ontario [Mr. Chesebro] will be adopted. I, for one, feel that we have not continued this debate far enough to enable us to determine what it will be best for this Convention to do, in regard to the government of cities, even with the additional time that is proposed between now and to-morrow at twelve o'clock. The subject is confessedly one of the most difficult and most important that has come before this Convention. We have yet had before us but one section of one report. There are two important minority reports that have not been considered at all, in reference to one of which I shall ask the serious consideration of the Convention. I feel that we had better proceed with this debate in Convention until we can see our way clearly to a conclusion that it would be safe for us to arrive at. We are told upon one side that, unless we adopt the majority report, our Constitution will be defeated. I think there are many gentlemen who feel that if we adopt the report of the majority it will and ought to defeat the Constitution we frame. I think we had better take no action to shorten this debate until we can see our way to some conclusion that will be likely to prove satisfactory to this Convention.

Mr. KINNEY—I do not know that I understand the effect of this motion. It strikes me that it provides for a vote being taken upon the article at the time specified. Does it not so read?

Mr. E. BROOKS—Yes, sir; at twelve o'clock to-morrow.

The PRESIDENT—It provides that the final vote on the article be taken at twelve o'clock.

Mr. KINNEY—It appears to me that it does not give us any opportunity for amendment if we have got to adopt the article at that particular time.

Mr. MURPHY—I am opposed to this motion. I do not think it is just on the part of the mover [Mr. E. Brooks] after having given his views, as he has, at length, to shut off gentlemen who are prepared to speak on this matter before the Convention. There is at least one gentleman whom I wish to hear, and who will occupy much more time than ten minutes—the time specified in the resolution. I wish to have all the light I can get upon this question before I vote, and for one I am opposed to both the resolution and amendment.

Mr. E. BROOKS—I did not suppose that this

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resolution would prevent a full and fair discussion. Nor do I understand that it concludes any gentleman from occupying even an hour and a half this morning, if he desires to speak at so great a length. We shall have this evening and to-morrow until twelve o'clock to discuss the article and adopt whatever amendment shall be proposed. One word in regard to the order of business of this Convention. I feel that we have been here quite too long for the public interest, to speak frankly, and quite too long, with proper regard to our individual interest; and I believe the time has come when it is necessary to put some limitation upon the business of the Convention, and if possible to fix a day within some fifteen days hence, when we may finally adjourn. From the motions made yesterday and to-day for reconsideration, it is plainly the purpose of a large number of the delegates here to reconsider the work which has been done since we assembled in June last. No article has been named here upon which a motion has not been made to reconsider. Hardly any section of any article which has been adopted by the Convention in the course of its deliberations, but upon which motions have not been made to reconsider in detail. I say, in the public interest, that I think we ought to name some day, some hour, when we will conclude our deliberations upon the pending subject which has been before this Convention for some eight or nine days, and also in regard to the final deliberations of the Convention.

Mr. CURTIS—It is very clear that, thus far in this debate, it has proceeded upon the general principle stated by the chairman of the committee [Mr. Harris] that the vote on the pending motion of the gentleman from Steuben [Mr. Spencer] would be a decisive or test vote upon the article. As I understand the motion of my colleague from Richmond [Mr. E. Brooks], it is that the final question on the whole article be taken to-morrow at twelve o'clock, leaving from now until that hour the only time within which the article itself can be perfected. As the gentleman from Kings [Mr. Murphy] says, there are others who desire to state at length their views upon the question. Those gentlemen who have taken part in the debate having expressed their views at very great length—I among them—it is certainly, sir, nothing but an act of fairness upon the part of the Convention to show that courtesy to other members; and I hope, therefore, that the resolution of my colleague [Mr. E. Brooks] will not prevail.

Mr. HATCH—I desire to correct the gentleman from Richmond [Mr. E. Brooks] in his statement that every amendment that has been proposed has been acted upon by the Convention. The sections that I proposed to be added to the finance article this morning have never been acted upon in Convention.

The question was put on the amendment of Mr. Chesebro to the resolution offered by Mr. E. Brooks to take a final vote on the article at seven o'clock this evening, and it was declared lost.

The question recurred and was put on the resolution offered by Mr. E. Brooks, and it was declared lost.

Mr. FOLGER—I offer the following resolution:

Resolved, That all questions and motions to reconsider be taken without debate.

Mr. COMSTOCK—Of course every motion to reconsider will be voted down unless some gentleman explains why it is that he makes the motion to reconsider.

The PRESIDENT—The resolution giving rise to debate, it will lay over under the rule.

Mr. MORRIS—I offer the following resolution, and ask that it lie on the table:

Resolved, That a committee of three be appointed by the President to audit the accounts of this Convention which may remain unsettled at its final adjournment, and that said committee be allowed, while actually employed on such duty, the same pay as provided for members of this Convention during its sessions.

The PRESIDENT—The resolution will lie on the table at the request of the mover.

Mr. SILVESTER—I desire to call up for consideration the motion made by me at the time when the report of the Committee on Currency and Banking was under consideration, to reconsider the vote by which that article was adopted, with a view to have stricken out of that article a clause which prohibits the consolidation of railroad corporations where the aggregate amount of capital of the corporations proposed to be consolidated is over twenty millions of dollars.

The PRESIDENT—Does the question refer to the vote on the adopted section?

Mr. SILVESTER—On the adopted section.

The PRESIDENT—Then the motion of the gentleman from Columbia [Mr. Silvester] is not in order.

Mr. SILVESTER—I made the motion on the morning as soon as the article was adopted. The Chair then informed me that it was not necessary to make that motion, Judge Robertson having made a motion to reconsider the vote by which the amendment of Judge Parker was adopted.

The PRESIDENT—If any notice was given of a motion to reconsider the section at the time it will be reconsidered. At what time was the motion given?

Mr. SILVESTER—Some time in August—it was the thirty-first of August.

The SECRETARY proceeded to read the notice of Mr. Silvester, as follows:

"Mr. Silvester moved to reconsider the vote on the adoption of the first section of the article reported by the joint committee on currency, banking and insurance, and on corporations other than municipal, banking and insurance."

The PRESIDENT—The resolution is not in order under the ruling of the Chair, if the gentleman has nothing later than that.

Mr. SILVESTER—Then I wish to give notice that at some future day I shall move to reconsider the vote by which the article on currency, banking, insurance and corporations other than municipal, was adopted; also, at some future day to reconsider the vote by which section first of the article on currency, banking and insurance and corporations other than municipal, was adopted.

The PRESIDENT—The notice is received.

Mr. SILVESTER—And the section to which it refers.

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Mr. LIVINGSTON—I desire to call up a motion to reconsider the vote by which the article on the powers and duties of the Legislature was adopted.

The PRESIDENT—When did the gentleman from Kings [Mr. Livingston] give notice?

Mr. LIVINGSTON — The gentleman from Franklin [Mr. Seaver] gave notice some time last week to reconsider.

The SECRETARY read the notice.

Mr. LIVINGSTON—I simply desire to explain that a reconsideration of this article is necessary in order to reach the motion to reconsider the vote by which the amendment I proposed in relation to building street railroads in the cities was lost. For the benefit of the members of the Convention who were not present when the vote was taken on the amendment proposed, I will state to them its purport. The section in the article, as it was originally framed, provided that no street railroads should be built without the consent of the local authorities in the cities and incorporated villages, and also the consent of the property owners of one-half of the assessed value of the property along the line of the street where the railroad was to be built. It further provided that the franchise should be sold to the highest bidder. That last feature appeared to excite a great deal of opposition. After having been thoroughly discussed, the whole section was struck out on the motion of the gentleman from Essex [Mr. Hale]. Understanding as I do that gentlemen who were in favor of striking out the article are not opposed to that portion of it which requires the consent of the authorities and the consent of a proper proportion of the property owners along the street where th proposed railroad is to be built, I offered an amendment embracing substantially these features; that is, that the Legislature, in its general law, should not authorize the construction of street railways in any city without the consent of the city authorities and the consent of the property owners, to the extent of one-third instead of one-half of the assessed value of the property along the line of the proposed road; or if that consent should not be obtained, then making it necessary to obtain the consent of the supreme court, on an application to be made under such rules and regulations as the Legislature should adopt. That motion, I believe, was voted down, but there were comparatively few members of the Convention in attendance at that time. I see now a good many gentlemen here who were not present on that occasion, and I hope that the resolution which I offer will be adopted.

Mr. McDONALD—In regard to this motion, it will be remembered by the Convention that the section as it was first put in the Constitution was put in when this body was comparatively full, and I think the ayes and noes were called upon the question. When it was stricken out the Convention was in such a condition that the ayes and noes were not called, and I suppose could not have been called. It seems to me, therefore, that for that reason this motion should be reconsidered. There is another matter which I wish to call up if this motion to reconsider prevails. That is in regard to the prohibition against towns and counties issuing bonds in aid of building railroads and other internal improvements. I had intended to call that up when the report of the Committee of the Whole on the Powers and Duties of the Legislature was under consideration in Convention, but the conclusion of that report came up on a day when I was not here. I understand that quite a number of the members of the Convention, and certainly I can speak for myself in that regard, have changed their views upon that subject. I voted at first to prohibit towns and counties from issuing bonds, but I am now in favor of allowing it under certain restrictions. I am informed that there are quite a number of members whose opinions have changed upon this subject, and I hope that both matters will be disposed of and to this end, that the motion to reconsider will prevail.

Mr. RUMSEY—I call for the reading of the seventeenth section reported by the Committee of the Whole, which was stricken out.

The SECRETARY proceeded to read the section as follows:

SEC. 17. No street railroad shall hereafter be constructed or operated within any of the cities or incorporated villages of this State until the consent of the local authorities of such village or city shall be first obtained for that purpose, and also the consent of the owners of at least one-half in value of the property, as fixed by the assessment roll of the previous year, on that portion of each street through or over which the same shall be constructed, be previously had and obtained for that purpose; or in case the consent of such property owners be not obtained, then with the consent of the general term of the supreme court of the district in which such road shall be located to be first obtained; such consent to be obtained and authenticated in such manner as the Legislature shall by general law for that purpose provide. The franchise allowing such railroad to be operated, when the same shall be wholly or principally operated within the limits of any city or incorporated village, shall be sold at public auction to the bidder who will build and operate said road at the lowest fare, which fare shall never be increased, after three months' public notice, describing the route of such railroad, in the State paper, and in such newspapers in the city or village where said railroad shall be located as the Legislature shall direct.

Mr. RUMSEY—I simply desire to call the attention of the Convention to the condition in which we shall have left this matter, if we do not reconsider this article. We have adopted in this article a provision that the Legislature shall provide by a general law for the laying down of street railroads. There is neither in that section nor in any other section of the Constitution any prohibition upon any company that shall be organized under that general law from going into any street of the city of New York, or Buffalo, or Rochester, or Brooklyn, and laying down a railroad at their pleasure. This section was inserted for the express purpose of preventing that state of things. We in the country care but very little about it; we have no desire to have any restriction upon laying down rails in streets in the country, as they would never be laid down where

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they would be apt to bother us; but we all know from experience, that unless there is some restriction upon these companies to prevent them from laying down these rails in cities, there will be an incessant squabble in the city of New York in reference to this subject. If gentlemen there desire, or if gentlemen in Buffalo or in Rochester, desire that these cities shall be subject to these annoyances, I have no objection; but I desire that they should understand and know precisely the effect of leaving the Constitution with this section stricken out.

Mr. C. C. DWIGHT—May I ask the gentleman to read the section which was stricken out.

Mr. RUMSEY—It is in document 136.

SEC. 17. No street railroad shall hereafter be constructed or operated within any of the cities or incorporated villages of this State, until the consent of the local authorities of such village or city shall be first obtained for that purpose, and also the consent of the owners of at least one-half in value of the property, as fixed by the assessment roll of the previous year, on that portion of each street through or over which the same shall be constructed, be previously had and obtained for that purpose; or in case the consent of such property owners be not obtained, then with the consent of the general term of the supreme court of the district in which such road shall be located to be first obtained; such consent to be obtained and authenticated in such a manner as the Legislature shall by general law for that purpose provide.

The subsequent part of that section and which I have not read was stricken out—I do not now recollect precisely for what reason—but this is enough to show the object of the committee, that it was to require the consent of the local authorities and some other restrictions upon the power of these companies organized under the general law for laying down street railroads.

Mr. STRATTON—In regard to this section that is now sought to be restored, or in part to be restored to meet the contingency which seems to have arisen by striking out the seventeenth section of the article, I beg leave to say that I considered the original section in the article as very michievous. When I first read it, it seemed to me that if the combined street railroad companies of the city of New York had undertaken to retain parties to draw a section to create a complete monopoly for them in the city of New York, they could not have done it better than by the incorporation of just such a section as was sought to be put in the article. I tried in vain to get the section amended in three or four particulars when it was in Committee of the Whole, but I failed to get either of them passed except one which I did not consider very important. The section was then, upon the motion of the gentleman from Essex [Mr. Hale], and after some remarks in opposition thereto by myself and others, showing its mischievous character, stricken out. I wish now to meet the objection made by the gentleman from Steuben [Mr. Rumsey], that by the general law which it is proposed shall be passed by the Legislature for the purpose of building railroads in the streets of cities, any person can go on and put down tracks in any of the streets of the city of New York. Sir, it is the very thing that the general law will provide for. The general law is to provide how, and under what circumstances, and under what conditions, parties may be allowed to lay down tracks in the streets of the city of New York. We cannot provide the necessary details in the section of an article of the Constitution here; and, therefore, it was that they made it the duty of the Legislature to provide by general law, making all the necessary restrictions and conditions to meet every want, every care, and every contingency which human judgment, human foresight, and human wisdom could devise and determine. It could not be done here in a simple section of this article. Still, I have no objection to it, if it can be put in a shape to secure every thing necessary to be provided for in an article of this kind.

Mr. RATHBUN—The gentleman [Mr. Stratton] has forgotten a part of the history of this section which has been stricken out. I desire to call the attention of the Convention to it once more, so that members will see how easy it is to undo work when members are absent after it has been well done. Now, sir, in the Committee of the Whole, when this article was under consideration, there was a very large quorum, and this article was discussed section by section, and the one now under consideration was adopted after a very long discussion, and after having met with the precise opposition stated by the gentleman from New York [Mr. Stratton] this morning. And after a struggle protracted for almost an entire day, that section was adopted by a large majority. Now, after sleeping upon the Secretary's desk, waiting for other matters to progress, only a few days ago it was called up, and by looking back at the votes which reviewed the work of a large majority of that quorum, I find the work of that article has been overturned, step by step, by votes varying from twenty to twenty-nine in the affirmative. And double the highest number it would not quite form a quorum. I have no doubt that the argument of the gentleman, and all the arguments of a similar character made by other gentlemen, had they been made at the time when there was a full discussion, might have obtained twenty-nine votes that would agree in overturning the work of a large majority of this body. I hope the Convention, without waiting for a discussion of this subject, will go back and take up the work done by a large body of the Convention when nothing was done without a quorum. I can assure the gentleman from New York city that the Committee on the Powers and Duties of the Legislature, have not been tampered with by New York railroad companies, or by any body else, and that their only purpose was, in accommodating people of the cities, and to take away from the Legislature a constant disposition to tamper with and trade upon this capital which was considered to be of great value in chartering these city railroads. Look at the reports of the Legislature now. Railroad charter after railroad charter has been introduced, and the same thing is going on that has been going on, and of which, for years, New York has complained, and everybody has complained. The object was to get rid

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of all that, and leave the matter to the city authorities where it belongs, to leave the people of the city of New York to locate, and control, and manage these railroads as the public convenience demanded—surrendering the whole thing up to the cities. The Convention did so in respect to this article, and I hope, not on my own account, but for the consistency of the Convention, and for the benefit of the cities where those roads are to be built, that the power to locate, and the power to authorize them to be built, will be handed over to the corporate authorities.

Mr. M. I. TOWNSEND—Mr. President, it may have been wrong in those gentlemen in the Convention who have left their private business to attend the sessions of this body, when my friend from Cayuga [Mr. Rathbun] was absent, to have gone on and transacted the public business according to their judgment. They may have committed an error, but I hope that my friend will not be very severe upon them, because it might create unpleasantness of feeling in their minds to find themselves thus reprimanded. I think, however, that the Convention, or that those members of it who have not been here, will not be very acrimonious upon us, because we have gone on and done the business for them. I did not rise for the purpose of discussing this question, but simply to say that the long discussions which have been had upon the subject now before the Convention have not tended to convert me to the doctrine that railways in the streets of our cities or towns are an injury to the cities or an injury to the towns. I do not believe they are, and I further do not believe it would be wise here to substantially enact that there never shall be any more railways in towns where railroads exist, as we shall do if we put into the Constitution insurmountable difficulties in the way of having competing lines of roads constructed—competing lines to those roads which are now in the receipt of immense incomes from the monopolies which they enjoy. I have expressed before in this Convention my views upon this question, and I do not desire to dwell upon them further; but I think it would be for the interest of the cities, if there could be a horse railway built in every street in every city of the State, so long as private capital was willing to incur the expense of establishing and maintaining them. I believe it is a necessity of our civilization, and therefore I am opposed to the reinstatement of this section, as a restriction upon further railroads being built.

Mr. FOLGER—I move the previous question.

The question was put on the motion of Mr. Folger for the previous question, and it was declared carried.

The question then recurred and was put on the motion of Mr. Livingston to reconsider the vote by which the article on the powers and duties of the Legislature was adopted, and, on a division, it was declared carried, by a vote of 49 to 30.

Mr. LIVINGSTON—I now move to reconsider the vote by which the amendment I proposed was lost.

The PRESIDENT—Has the gentleman from Kings [Mr. Livingston] laid the foundation for his motion?

Mr. LIVINGSTON—I have.

Mr. FOLGER—I move the previous question.

The question was put on the motion of Mr. Folger for the previous question, and it was declared carried.

The SECRETARY read the amendment proposed by Mr. Livingston to section 21 of the article on the powers and duties of the Legislature, reported by the Committee of the Whole, as follows:

"But no law shall be passed granting the right to construct and operate a railroad within any of the cities, towns or incorporated villages of this State, without the consent of the local authorities of such city, town or village, and also the consent of the owners of at least one-third in value of the property, as fixed by the assessment roll of the previous year, on that portion of each street through or over which the same shall be constructed; or in case the consent of such property owners cannot be obtained, then without the consent of the general term of the supreme court of the district in which such road shall be located; such consent to be obtained and authenticated in such manner as the Legislature shall by general law for that purpose provide."

The question was put on the reconsideration of the motion by which the amendment of Mr. Livingston was rejected, and it was declared carried.

The PRESIDENT announced the question to be on the amendment offered by Mr. Livingston.

Mr. McDONALD—I understood that the previous question only applied to the motion to reconsider.

Mr. LIVINGSTON—I desire to offer the amendment, so that in case—

The PRESIDENT—How far did the gentleman from Ontario [Mr. Folger] intend that this motion for the previous question should reach?

Mr. FOLGER—I intended it to reach as far as it could. [Laughter.]

Mr. McDONALD—I move to so amend that in case either the local authorities or the residents refuse, then it shall be necessary to apply to the supreme court.

The PRESIDENT—The gentleman will reduce his amendment to writing.

Mr. SILVESTER—I would like to amend the section so that it shall read, "no street railways, etc."

Mr. LIVINGSTON—I will accept that amendment. It was the phraseology used in the original section.

Mr. MURPHY—I move to amend this section by striking out—

The PRESIDENT—Two amendments being already pending, the amendment of the gentleman from Kings [Mr. Murphy] is not in order.

Mr. MURPHY—One was accepted.

The PRESIDENT—One amendment is offered by the gentleman from Kings [Mr. Murphy], and to that the gentleman from Ontario [Mr. McDonald] offers an amendment.

The SECRETARY read the amendment of Mr. McDonald as follows:

Insert after the words "property owners" the words "or the local authorities."

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Mr. McDONALD—I offer this with this idea: I do not consider that the consent of the local authorities should have any more effect than the consent of the local owners of property. I propose to put them both on a level, so that they must apply first to both, and if either do not give consent, then the persons desiring the grant can apply to the general term of the supreme court, who shall have power to grant it.

Mr. LIVINGSTON—My objection to the amendment of the gentleman from Ontario [Mr. McDonald] is that it ignores entirely the principle which lies at the bottom of this whole matter. I conceive that cities have a certain interest in the streets, and that the franchise of laying rails in these streets, as a matter of principle, should not be granted by the Legislature, without the consent of the authorities representing the city. Now, so far as the property owners are concerned, they have but a qualified interest in the streets, and it is, perhaps, more a matter of courtesy than of strict obligation to consult them in relation to the use of the street. The interest of the cities should be protected in this matter, and that can only be done by leaving it somewhat under the control of their respective local authorities. For this reason I am opposed to the amendment of the gentleman from Ontario [Mr. McDonald].

Mr. RATHBUN—I wish to ask whether the section proposed to be amended by the gentleman did not contain an express provision that there should be the consent of the city authorities?

Mr. LIVINGSTON—I understand the section struck out did contain such a provision.

Mr. HALE—I would ask the gentleman from Kings [Mr. Livingston] whether under such a provision as he proposes, requiring the consent of the local authorities, to what body or what authority application will have to be made for the consent? It seems to me that the term is a very indefinite one, and that there should be some specification as to what officers or authorities in the city shall give the consent?

Mr. LIVINGSTON — I would simply say in answer to the gentleman that my understanding of it would be that it referred to the mayor and common council.

Mr. HALE—Then why not say so?

Mr. LIVINGSTON—Because the section includes incorporated villages and towns which have no mayors.

Mr. ALVORD—While I do not desire to cut off debate on the proposition of the gentleman from Kings [Mr. Livingston], it seems to me that the matter has been sufficiently explained, and I therefore move the previous question upon the amendment.

The question was put on the amendment of Mr. McDonald, and it was declared lost.

Mr. MURPHY—The importance of this subject cannot be magnified. The streets in our cities are fast becoming entirely impassable by carriages or trucks, by reason of these railroads. There are streets in the lower part of New York, the use of which is almost utterly denied for the purposes of public travel other than by these railroads, and the use of which is denied to the owners of property upon those streets. The right to build these railroads has been granted by the Legislature from time to time in extension, if I may so express it, of the general law. The general law authorizing the incorporation of railway companies was not intended to include street railways, and so special acts have almost invariably been passed in aid of the incorporation of such railroads. Other acts have been passed by the Legislature forbidding the local authorities from authorizing the construction of railways in cases where they began and ended in the cities. Now, it is proposed by this amendment to give to the local authorities the right to lay down street railways, with the assent of the people owning the land on the street, or in case they do not consent, then with the assent of the supreme court. Sir, I object to the provision in regard to the supreme court. I do not see how the supreme court is to act in this matter, according to any course or practice of a court. There is nothing judicial in the nature of this question that can properly come under its cognizance. It is making the supreme court not a legal tribunal, but a legislative body. This function is entirely foreign to that court, and its exercise is calculated to lead to inextricable confusion. There is, to my mind, a manifest impropriety in allowing the supreme court to have any thing to do with the subject in that respect because the court may be called upon to pass judicially in regard to the rights of individuals in such cases. The highest court of this State has held, and it is undoubtedly the law of the State, that no street railway can be laid down in cities other than New York except by consent of the owners, or by remuneration to them for the damages that they sustain by reason of the taking of their land for railway purposes. The court of appeals has held that in New York the fee of the land of most of the streets is vested in the city, as a trustee for the public, that the city has control over it, and that the right to build these roads may be granted by the city without the assent of the owners; but in every other city in the State, the owners own by reason of the peculiar language of the highway and street acts to the middle of the street, and these railroads cannot be laid down without the assent of these owners, or a remuneration to them. Now, the supreme court may have to pass upon these questions of right as regards individuals. One or two such cases have arisen in my own practice. Therefore it strikes me that it is particularly improper to make the supreme court a legislative body for the purpose of passing upon this question as to the expediency of granting these railroads. Upon the whole, I would leave this subject without any provision in the Constitution. But if we are to have it, let it stand nakedly with the assent of the authorities and the owners. I move, therefore, to strike out so much of this section as refers to the supreme court.

Mr. OPDYKE—I hope the amendment of the gentleman from Kings [Mr. Livingston] will be adopted, but I shall have to oppose the motion of my other friend from Kings [Mr. Murphy] for reasons which I will very briefly state. He declares that this is a subject to be left entirely to the Legislature. I think, sir, that there are very

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good reasons why it should not be thus left. The gentleman from Steuben [Mr. Rumsey] has told us that we have already adopted a provision requiring the passage of general laws for the construction of railroads in cities. He has also told us, very truthfully, that unless some restriction be made here, it will be in the power of the Legislature to authorize the construction of railroads in any street of any city or village in the State, without requiring the consent of the local authorities or property owners. Now, sir, we have only to look back at the policy which the Legislature has pursued heretofore to determine whether it is proper that that question should be left to them hereafter. It is well known to every member of this Convention that they have taken from the city of New York all right to authorize or prohibit the construction of railroads in the streets of that city, and that they have passed measure after measure, granting franchise after franchise, without money and without price, for the construction of railroads in the city of New York. Now, if that has been their policy in the past, it is not unreasonable to believe that it will be their policy hereafter; and I ask this Convention whether it would be right to foist upon the city of New York railroads in any of the streets of that city without the consent of the people, as represented in their local government. I think that no member of this Convention can in his heart declare that such a policy is right. Sir, it is wrong; it is unjust; it is depriving the citizens of New York, and also the citizens of every other city, of one of their most important rights, in thus forcing upon them, without their consent, that which may be greatly to their detriment. It has been said here by the gentleman from Rensselaer [Mr. M. I. Townsend] that this provision would prevent the construction of other railroads in the city of New York, and would thus greatly benefit the owners of those now in existence. I believe the gentleman is entirely mistaken in regard to that. I think it would not prevent the construction of any new road demanded by the public convenience. I may be permitted now to say a word in reference to another remark which the gentleman made on this subject when it was under debate here before. He insinuated that the advocacy of this restriction by gentlemen upon this floor might have been prompted by personal interest. Now, I do not suppose the gentleman intended to refer to me particularly, but to satisfy his mind upon that point I wish to say that I do not now own, and never have owned, and never expect to own, a share in any street railroad in the city of New York. I do not approve, sir, of the manner in which they have originated, and I will not touch them. The amendment of the gentleman from Kings [Mr. Livingston] next requires the consent of one-third in interest of the property owners on the streets in which it shall be proposed to construct railroads. This is a most proper safeguard for the protection of private interests. The street may be devoted to commerce, and so narrow that the railroad would so obstruct it as to unfit it for business, and thus greatly injure the value of the property. Or it might be on Broadway and Fifth avenue, which are the only remaining general thoroughfares for vehicles, unobstructed by railroads, traversing the city between the Battery and the Central Park. In such cases it is proper that the property owners should be consulted and their sanction obtained. But in cases where the public convenience would be promoted, without serious injury to their property, it is proper there should be some power to review, and, if necessary, to overrule, their decision if it be adverse to the application. I can conceive of no better means of relief than this provision which the gentleman from Kings [Mr. Murphy] moves to strike out, referring the question to the supreme court. I have no doubt that he is right in saying that it is not a matter to be referred to that court strictly in their judicial capacity, but it seems to me that they may act as arbitrators in such cases as these, involving the question of the public good; and if, in the judgment of that court (for that I suppose is the form in which the question will be presented), the public interests will be promoted by granting the right to build these railroads, then the right will be granted, despite the objection of property owners; and if otherwise, it will be denied. I see no reason why the court, acting in the capacity of arbitrators, might not decide such questions. It is not a legal question; it is simply a question of the public good. If the gentleman can suggest any thing that will better attain the object, and will offer it in place of this, I will very readily assent to it; but if he cannot, I hope this provision will be adopted, as I can see no objection to it in the form in which it is presented.

Mr. M. I. TOWNSEND—Nothing was further from my thought than to impute any motive of interest, either to the gentleman from New York [Mr. Opdyke] who has just spoken, or to any other gentleman of the committee, in connection with this matter. My argument was addressed to the article itself. I contended that the theory would work in the interest of existing railways; not that that was the object or intention in the minds of the gentlemen who drew the article or who advocated it. I wish now to say one word in addition to what the gentleman from Kings [Mr. Murphy] has said in regard to the condition of our law as it will be if we adopt this constitutional enactment. As that gentleman well says, in the city of New York, at all events in most of the streets in the city of New York, in the older portions of the city, it is held by the courts that, the title to the streets is in the city, and when the city says the streets may be occupied by railroads, the owners of the adjacent land have nothing to say to it, as their interests are presumed not to be affected. In all the other cities and villages of the State, the courts hold that the owners of the adjacent land own to the center of the street, and no railway can be laid through the streets of any other city or village until the company have procured by purchase from the owners of the adjacent soil, the right to pass through such streets, or until they have proceeded by commission to take the land the same as they would take the inclosed lots in a city, and make compensation to the owners. Even this very week, since I have been sitting in this hall, I have been as-

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sured by Judge Peckham, who came in here, that he had granted a decision in my favor, and ordered a perpetual injunction in two cases where the Troy and Boston Railway company had attempted to lay down tracks in my city, without acquiring the title to the lands, and the owners had commenced action for the purpose of ejecting the road from the land, and restraining them from using it hereafter, because they had not obtained the title. And so, in all the cities of the State except the city of New York, we shall require under this amendment, that those attempting to get a railway shall first get the consent of the owners of the land, and then that they shall proceed to take the land by commission, before the roads can be built, so that two processes will have to be gone through with, first getting the consent of the owners, and, second, acquiring the lands by commission. Now, it seems to me that, it would be entirely sufficient if it were provided, as it is now provided by law, that the owners of the land shall be compensated in damages, through the working of our constitutional necessities as they exist at the present time—the constitutional necessities that are imposed upon those who seek to take the lands of private individuals for public uses, without making further provision that consent must be obtained to the taking of the land. I do not see that the proposition of the gentleman from Kings [Mr. Murphy] aids this matter. I think his proposition, if I know how it is to work, is likely to prove an obstruction; that is, if there be no appeal, and if the consent of the people living along the line is to be required. Does the gentleman from Kings mean to leave that in, or does he propose to strike it out?

Mr. MURPHY—My proposition is to strike out so much of the section as refers it to the supreme court to act as a legislative body on this subject, leaving to that court their judicial powers in regard to it. If the gentleman will allow me to add one other remark, I will say that I do not wish that the judiciary of this State shall participate in the giving of these grants, to be charged, as the judges may be, with corruption in their action.

Mr. M. I. TOWNSEND—I concur in the wish of the gentleman from Kings [Mr. Murphy], to save the judiciary from being mixed up in this matter, but if this Convention shall require that the previous consent of the owners of the adjacent soil shall be obtained, and if no alternative shall be furnished, we will certainly in many cases put a perpetual prohibition upon the building of any more roads.

Mr. RATHBUN—The gentleman from Rensselaer [Mr. M. I. Townsend] seems to be in doubt about what he does want. He seems to be very anxious that there should be a railroad in every street of every city on account of its most extraordinary convenience; but now he is opposed to leaving it to the authorities of cities to determine the location of these roads unless the rights of the people who own the property along the street are consulted, and the railroad company are to be required to pay the property owners along the entire street. Now, sir, that would be a very interesting operation in a city like Troy or Albany, or Buffalo or Rochester, to go along the streets, where you want to make a railroad five or six miles long, to the owners of the property on each side, the lots for the most part being only twenty-five feet wide, and make application to them to convey their interest, in order that the road might be built. And suppose the owners do not agree to that, then you must have appraisers, and you must appraise all the lots—

Mr. M. I. TOWNSEND—I simply said that was the law now, and I assure my friend from Cayuga [Mr. Rathbun] that that is the law now, strange as it may seem. I have not made the law. And I will say further to my friend from Cayuga, that it is not in the power of this Convention to take away that right from the citizen.

Mr. RATHBUN—I am in no doubt about the law. I have been studying law myself for the past few years. [Laughter]

Mr. M. I. TOWNSEND—It was first decided in Onondaga county in the case of Williams *v.*—

Mr. RATHBUN—It has been decided a great many times and on a great many occasions, and, as a general question, it was the law without deciding it at all. Now, then, if you want street railroads, how are you going to get them? You have got to get them by giving the right to the city authorities to determine whether they wish the roads in the city or not. We are not going to trample upon the rights of citizens, but I apprehend that there are occasions when the public interests of the city should govern and should override that imperfect and inchoate right in the soil of the street which is a mere matter of reversion. Now, this provision of law establishes the doctrine that in all cities where railroads are desirable, they shall be constructed by the consent of the public authorities, and located by the public authorities without regarding the absolute rights of the persons owning the land along the street. And if he will not consent, and the public interests require it, the courts shall decide whether a right more imaginary than real shall be given up for the benefit of the public. The gentleman from Kings [Mr. Murphy] objects to this amendment on the ground that in New York many of the streets are obstructed and that the ordinary business of the streets is driven out by these railroads. Now, can there be any other way in which the public interests will be better guarded in regard to the construction of railroads in the streets of cities than by intrusting them to the mayors and common councils of cities? Who can do it better? Can the Legislature determine how railroads should be built in New York and Brooklyn, or in any other city? Cannot the local authorities determine, better than any other power, in which of the streets of the city railroads may be constructed so as not to deprive the public of the benefit of the highway? It is precisely for the reason given by the gentleman that it should be left here, and his argument was an argument in favor of instead of against it.

Mr. AXTELL—I move the previous question on this whole subject.

The question was put on the motion of Mr. Axtell for the previous question, and it was declared carried and the main question ordered.

The question was put on the amendment of

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Mr. Murphy to strike out all relating to the supreme court, and, on a division, it was declared lost, ayes, 34; noes, 47.

The question then recurred on the amendment of Mr. Livingston, and, on a division, it was declared carried, ayes, 58; noes not counted.

Mr. VEEDER—Mr. President—

The PRESIDENT—The previous question having been ordered, debate is not in order.

Mr. VEEDER—Not upon the question of an amendment to the amendment?

The PRESIDENT—The Chair cannot permit debate, the previous question having been ordered.

Mr. VEEDER—Would not a motion to reconsider be in order?

The PRESIDENT—The Chair will receive a motion to reconsider the vote by which the previous question was ordered, if there be no objection.

Mr. DEVELIN—I object.

The PRESIDENT—Objection being made, the motion lies on the table.

The question was put on the adoption of the section, and it was declared carried.

The question then recurred on the adoption of the article as amended, and it was declared adopted, and referred to the Committee on Revision.

Mr. VEEDER—I move to reconsider the vote by which this article has been declared adopted.

A DELEGATE—I object.

The PRESIDENT—Objection being made, the motion to reconsider lies on the table.

Mr. HISCOCK—I wish to give notice that I will move a reconsideration of the vote by which the article on finance was adopted, and I give notice that if that motion shall prevail, I will move to reconsider the vote by which the eighth section of that article was adopted, with a view to amending that section, by striking out the provision prohibiting State aid to railroads.

The PRESIDENT—The notice will be received.

The Convention then resolved itself into Committee of the Whole upon the report of the Committee on Cities, Mr. RUMSEY in the chair.

The CHAIRMAN announced the pending question to be on the motion of Mr. Spencer to strike out the first section of the article.

Mr. STRATTON—I do not intend to occupy the time of the Convention very long. Heretofore, in most of the discussions in this Convention, I have found the views I entertained so ably expressed by other gentlemen that my labors as a debater here have been comparatively light. On the subject now under discussion, however, I propose to submit a few remarks, as there are some things which have been apparently overlooked by gentlemen who have participated in this discussion, and of which I feel myself called upon to speak as a representative from the city of New York, a city which is more intimately connected with this question, and has greater interests at stake in the action of this Convention in relation to this article and the substitutes which have been proposed for it, than any of the other cities of the State. While I cannot claim, as has been claimed by two of my colleagues who have preceded me, that I was born in the city of New York or that I have resided there all my life, I can say that for many years I have resided there, and have been a close observer of the business and government and of all the institutions of that great and growing city; and I come here from the city of New York not (as was insinuated by one of my colleagues in relation to another) by a vote of the people of the whole State, but by the vote of a portion of the people of the city of New York; and therefore, as a representative of that city, I am the peer of any of the other representatives upon this floor from that city. And I do therefore, in my capacity as a delegate from that city, speak as much for the people of New York as any other delegate upon the floor of this Convention. Now, in relation to this article, I have to say, in the first place, that I adopt the view of the honorable gentleman from Onondaga [Mr. Comstock] in relation to the sovereignty of the people, and to their being the only sovereign power. But that sovereignty must in a government be represented. This body is the nearest representative of that sovereignty that can be known or recognized in this State, and that sovereignty is now engaged in revising a Constitution embracing rules and regulations having reference to the government of every part of this State. In the discharge of its duty it is bound to give to the people of every part of the State a form of government best adapted to the promotion of the interests and prosperity of the people of every part of the State. It can, however, deal only in general principles, providing for the detail of its plan of government by creating another body, representing that sovereignty, chosen at frequent periods and familiar with the growing wants and changes of a growing State. I admit here that the power of this Convention is sufficient to confer this sovereignty upon any portion of the State. It is not a question of the power of the people whether they will abdicate or abnegate any part of this sovereignty. The right to this self-government which is claimed here by some members of this Convention, the inherent right to this self-government or this sovereignty on the part of any particular portion or locality of this State, I claim does not exist. It can only be conferred by the sovereign power. There can be but one sovereign in the State, but one sovereign power, and one chief executive. Such self-government of a locality can be rightfully claimed by no locality in this State except as a result of a successful revolution, against the sovereign power of the State. The power given to localities for local government does not grow out of any inherent right, but is given because it is more politic, more expedient to delegate that power of local government for particular and local purposes. It has been the policy of this State to confer, through its Legislature, upon cities, the privilege to conduct their local matters in a certain way, under a charter, and which is in its nature but a commission, subject at all times to change or revocation by that Legislature. It is now, for the first time in the history of this State, proposed to confer a portion of this sovereignty on certain portions or localities of this State. And this is founded on the theory of the absolute right of such localities to self-government. If this theory is right, in the nature and fitness of things, if it is an inherent right in itself, or a right which has grown out of

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a successful revolution against the sovereign power, or as achieved by the cities of the middle ages in their conflicts with the baron and the lord, then we have nothing to do in this Convention but to prohibit the Legislature from exercising any power or control over the localities for which this right is claimed; and this Convention would be going beyond the limits of any power which could be conferred upon a Convention in a civilized State, if it were to do any thing more whatever; because it would be an infringement upon those natural and acquired rights which no Convention in any civilized State would have any right to make, or which it would be proper for them to make. If that right does exist, then we must have half a dozen "Cæsars in Rome," and confusion worse confounded in the execution of the laws of the State, as was demonstrated last evening by the honorable gentleman from Ontario [Mr. Lapham]. But this right is not wholly conceded by this majority report of the Committee on Cities. They would not go so far as to concede that this was a right. It was intimated by the honorable gentleman from Herkimer [Mr. Graves] that he had got this whole mighty subject, larger than this whole Convention, as large as the boundaries of the State, and affecting not only the cities of the Empire State, but half, if not all, the cities in this glorious Union—that he had got all this mighty subject compressed down into homeopathic proportions, and confined in a nutshell. Sir, this thing cannot be contained in a nutshell. It involves questions which open like an immense fan, and spread over the whole country. The question which the gentleman had got in a nutshell was this: whether the people of the city of New York are capable of self-government. But there was a principle lying behind that question which the gentleman had not yet cornered in a nutshell, and that was, whether they were, simply by reason of their capacity for self-government, sovereign and independent of the power of the State to govern in every part of the State. But as I have said, the majority report of this committee does not concede this doctrine of the gentleman from Herkimer. It does not concede this right of self-government; for it grants the right as a privilege, and puts in hooks and hampers and all sorts of things, to hold them back in the exercise of it. It holds them back in the whatves and piers, it holds them back in other things. It provides that the mayor may be deposed by the Governor. It dare not acknowledge and establish this doctrine of self-government which is claimed upon this floor by the gentlemen of that committee, but which is not incorporated in the article which they have reported. They do not claim in their article what they claim in debate, that the city of New York is entitled as a matter of right to a government independent of the government of the State. It is therefore left where the gentleman from Onondaga [Mr. Comstock] left it, as a question of mere policy, of mere expediency on the part of the Legislature of the State, on the part of the sovereign people of the State, operating through their Legislature, to determine what is best under the circumstances of to-day; what is best under the growing circumstances of next year; what is best under the changeable circumstances of five years hence; what is best under the great growth and mighty strides in progress of the cities of this State during the next ten years. It is a matter of policy, it is a matter of expediency, and I cannot agree with my learned friend, Judge Daly, when he scouts the idea of this being a matter of policy and expediency, and I put the one judge against the other, the judge from Onondaga against my learned colleague from New York. Mr. Chairman, the plan of the majority of the Committee on Cities, is, in my humble judgment, fraught with dangerous consequences. It denies to the people of the State, no matter what the exigency, the right to legislate for the people of the whole State in regard to the safety of their persons and property, and I do not think that such a provision is either expedient or politic. The city of New York is affected more than any other locality, simply because of its size, because of its importance, because of the great interests involved in it as connected with other portions of the State and country. The people of every part of the State have more intimate relations with the city of New York than with any other one portion of the State. It is the terminus of all our lines of railway. It is the terminus of our canals. They do indeed come out into the Hudson river at Troy and at Albany, but the boats that come down through those canals find their terminus at the city of New York. Thither is transported the products of the north and of the west, and there they find a market. These vast interests being connected with the city of New York, and it being our only gateway to the sea, and the only avenue for our domestic products to reach the great markets of the world, it becomes, from its natural position, of very great importance, and, consequently, very deeply concerned in legislation which affects it. So much for the general principles involved. I now come to the action of the Legislature in creating the present police system, and which seems to have been the first of the so-called acts of aggression on what are called the rights of cities; and with the consideration of that act of aggression, so-called, on the part of the Legislature, I shall yield the floor. The chairman of the Committee on Cities tells us that "the patronage of the police was taken away from the city of New York and given to the central government of the State in April, 1857." What he means by "patronage" is more than he explained in the lengthy argument which he made in support of the plan of the committee. What patronage was taken away from the city of New York? It was the political patronage that existed in the mayor, in the recorder, and in the city judge of New York—their right to appoint what was called the municipal police, which existed prior to the present metropolitan police. The city judge was entitled to so many appointees, the recorder was entitled to so many appointees, and the mayor had the balance, and the police were made up without a question upon political considerations, every man of them a politician, an active politician, every man of them known to be right in the harness and ready for work in the political party from which he re-

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ceived his appointment. That is the "patronage" that was taken away from the city of New York, and the taking of which the learned chairman of the Committee on Cities complains of as such an outrage. They took from the city of New York the power of making political police appointments in the interests of a political party, but the same power was not conferred on any other party. Now, under what circumstances was this "patronage" wrested from that city by this "aggressive" act of an "aggressive" Legislature, "trampling upon the rights" of that glorious city of New York? During the winter of 1857 I was very frequently in the Legislature of this State, and I recollect the honorable gentleman from Richmond [Mr. E. Brooks], then a senator there. I listened one day in the Senate of this State for about an hour to the most convincing, the most exhaustive, and most conclusive argument upon this subject to which I have ever listened, from the then Senator from New York [Mr. E. Brooks], in defense of this proposed system, and in terrible denunciation of the system of which this was to be the successor. His argument at that time convinced me. His argument at that time has never been answered upon this floor, and the Senator himself never will live to see the day that he can answer the argument he then made or explain away the principles which he there enunciated. Besides, as he has had the candor to tell us here, this system grew out of a great necessity and a grievous and growing evil. The government of the city of New York had become corrupt; its police could not be trusted. The administration of criminal justice in that city had become a farce and a scandal, and it was reported upon our streets and in our newspapers that the arrest and punishment of criminals in New York city was a mockery, a fraud on justice and a hollow form. People without distinction of party flocked together in public meetings and sent up such petitions, that as the then Senator himself has told us, one of them lying upon the desk of the President of the Senate hid him from the view of Senators, so great was its proportions. The people came to the Legislature and demanded a change. Mr. A. Oakey Hall came up here and worked all the winter of 1857 to get through this same police system which has been so stigmatized here upon the floor of this Convention. It was by the eloquence of my friend from Richmond [Mr. E. Brooks], then an honored Senator from the city of New York, that this bill was carried through the Senate. But we are told by the chairman of this committee that the expedient of this police system has proved a failure and must be abandoned. I only wish that the honorable gentleman had given us some little idea wherein that failure consists, and I would proceed to show that the statement was wrong from beginning to end, and that instead of its having proved a failure, it is one of the most perfect instances of success that has ever been witnessed, one of the most successful systems of its kind that has ever been inaugurated in that city, or in any other city or country upon the face of the globe. I should, as it is, feel constrained to do this, were it not that my colleague [Judge Daly] and others upon this floor, have conceded the fact that the police system of New York is one of the most thorough and efficient systems that has ever existed in that city or in any other city in this country. I therefore consider the argument of the chairman of that committee, in that particular, answered by the frank, candid, and manly admission of my colleague [Judge Daly]. However, if that argument required any other answer the present efficiency of the police would be a sufficient one. But we are told by the gentleman from Richmond [Mr. E. Brooks] (to whose eloquence we are in great part entitled for this police system), that "the police are selected on party grounds," that "two persons applying for the position of patrolman, one a democrat and the other a republican, the republican is selected and the democrat rejected." It was also charged by my learned colleague [Mr. Lawrence] the other evening, that the police system of New York is a political machine. Now, if this be so, if the Legislature has created any political machine in the city of New York, for the purpose of controlling the police of that city, making them subservient to any political power or purpose, whether it be republican or democratic, my voice shall be for wiping it out, and for putting into the Constitution of this State a provision on this subject so strong and so definite that no Legislature hereafter shall ever mistake it. If this police system is used for partisan purposes, if it be diverted from the use for which it was intended by the Legislature, and if it has become corrupt and a mere instrument of party, then, as I have already said, I stand here ready to incorporate into the Constitution a provision which will prevent the Legislature from interfering in any shape or manner hereafter with the police system of the city of New York. My colleagues, therefore, have me upon the record pledged to vote with them to blot out what they say is a great aggression upon the rights of the people of the city, if they can substantiate the charges which they have made against this police, that it is used for party purposes. It has been stated here, over and over again, by some of my colleagues, that this is a political machine; that it is used in the interests of the republican party; that it was created by the republican party for the purpose of making republican votes in the city of New York, and for the purpose of being used against the interests of the democratic party in that city. I have taken pains to ascertain whether this is so, and to ascertain how the appointments of policemen are made in the city of New York, and I think this Convention ought to understand just how that matter is, and I will detain them for a few moments upon that point. I hold in my hand a brief communication from the chief clerk of the board of metropolitan police, directed to me, in which he says:

"CENTRAL DEPT. OF METROPOLITAN POLICE,
No 300 Mulberry street,
NEW YORK, January 24, 1868.

"*The Hon. Norman Stratton, Constitutional Convention, Albany:*

"MY DEAR SIR: The president of the board of metropolitan police requests me to acknowledge the receipt of your letter of inquiry of the 20th

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inst., and to furnish you with the information desired.

"QUALIFICATIONS.

"By reference to section 13 of the police law (see page 10 of the manual herewith transmitted), it will appear that members of the force are appointed for life, unless removed for cause. That they must be citizens of the United States, who have never been convicted of crime; able to read and write the English language understandingly; and have resided in the State one year next preceding the appointment.

"These qualifications are fixed by statute. In addition, the rules of the board require the applicants to be not less than five feet seven inches in height, weighing not less than 135 pounds, and free from all diseases and chronic or constitutional physical derangements.

"The standard of character, morals and habits will appear by the petition.

"The first step in seeking an appointment is to procure a copy of the blank petition, which is to be signed by five reputable citizens, and verified by affidavit by one of the petitioners.

"The petition referred to in this letter is as follows:

"*To the Board of Metropolitan Police:*

"The undersigned request the board of metropolitan police to appoint ——— ——— to be ——— in the metropolitan police force, and individually, and each for himself, states and represents to the board that he has known the said ——— ——— personally, intimately and well for ——— year last past, and is qualified to speak intelligently in relation to his character and habits, and states and represents that said ——— is a man of good moral character, correct and orderly in his deportment, and not in any respect a violator of law or good order—that he is a man of sober, temperate and industrious habits—that he is not addicted to the habitual use of intoxicating drinks, or to other hurtful excesses. The undersigned, each for himself, further represents that he has never seen him drunk, or known or heard of his having been drunk, nor of his having been guilty of, or arrested for, any criminal or disorderly conduct or act. And they further represent, as aforesaid, that he is a man of truth and integrity, of sound mind, good understanding, and of a temper and manners fit to be a policeman. The undersigned are willing and ready at any time to appear at the central department and make affidavit to the truth of the above representations."

The hour of twelve o'clock having arrived, the PRESIDENT resumed the Chair in Convention.

The PRESIDENT—The hour of twelve o'clock having arrived, by force of the order adopted yesterday the Committee of the Whole is discharged from the further consideration of this article. The Convention will now proceed to its consideration. If there be no objection the order observed in the committee will be observed in Convention. No objection being made, the gentleman from New York [Mr. Stratton] will proceed with his remarks.

Mr. STRATTON—Mr. President, I was proceeding to show the manner of appointing policemen in New York.

"The blank" (which I have read) "is issued only by the commissioners personally.

"When it is returned, signed by five reputable citizens and verified by the affidavit of one of them, the commissioner who issued the blank sends the applicant with a note to the chief clerk to be examined in relation to his legal qualifications.

"Preparatory to that examination, he is required to answer in his own handwriting the questions contained in a prepared blank.

"These questions relate to his age, and many other qualifications, almost as minutely as they are asked by a life insurance company upon issuing a policy, and they are answered under oath. Among these questions are the following:

"In what year were you born?

"Where were you born?

"If out of the United States, have you been naturalized, when and where?

"Can you read and write English?

"Have you been convicted of any crime?

"How long have you resided in this State?

"Where do you now reside?

"Are you married or single?

"If married, what family have you?

"What has been your occupation?

"Are your parents, or either of them dead; if so, at what age and of what disease did they die?

"Have you ever been a policeman?

"Have you paid or promised to pay, or give any money or other consideration to any person, directly or indirectly, for any aid or influence toward procuring your appointment?

"This paper when filled up is verified, as you will see, by the affidavit of the applicant on the back.

"The chief clerk, if all is satisfactory, sends the applicants with papers mentioned filled up and complete before a committee of three police surgeons, by whom he is measured in his naked feet, and weighed without clothing, and subjected to a thorough examination as to his physical condition, including sight and hearing. This scrutiny is very thorough, much more so than the army or navy, for the reason that these men are appointed for life, and if old, diseased or feeble men are appointed the department would become a hospital for invalids.

"If the applicant is found to be sound, the fact is certified by the surgeons on the back of the blank containing the questions."

I wish to call the attention of the Convention for one moment to this. The applicant has, in the first place, been required to find five men who will swear to the statements made in the petition. He then, under oath, answers a long list of questions as to himself, his habits, his family and every thing else which a proper caution could devise as necessary. He then is examined by three police surgeons as carefully as a man is examined to be incorporated into the army of the United States; and after all this, to show the care and the caution—not a word here about politics so far—to show the care and the caution in selecting the best men for these purposes, after all this has been done, a third precautionary step is taken:

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"The papers are then referred to the chief clerk, who issues an order to the captain of the precinct where the applicant resides, a blank copy of which is as follows:

"'CENTRAL DEPARTMENT METROPOLITAN POLICE,
No. 300 Mulberry street,
NEW YORK, ——, 186—.

"'No.——

"'*Captain* —— ——,

"'—— *Precinct.*

"'SIR: I desire you to make quiet and confidential inquiry as to the character, habits, associates and reputation of —— ——, who resides at ——

"'Report to me in writing, without delay, all the information obtained.

"'Yours, etc.,

"'—— ——,

"'*Chief Clerk.*

"'N. B. Prompt and careful attention to this is requested, and report on the back of this paper within three days if practicable.

"S. C. H.'"

And on the back a report is made by the captain of that precinct, after making these most careful and confidential inquiries. The letter of Mr. Hawley continues:

"If this report is favorable he is recorded as eligible for appointment. If it is unfavorable, the name is placed in the category of ineligible. From the list of eligible, appointments are made from time to time, as vacancies occur."

Now, as to the political part of this, Mr. Hawley says:

"I have been chief clerk of the board since 1860"—

[There is no complaint before that time.]

"From that date to 1864, the board was composed of three republicans; from 1864 until March 1, 1866, it was composed of two republicans and two democrats; from that date until the death of Mr. Bergen it was composed of three republicans and one democrat; since the death of Mr. Bergen, of two republicans and one democrat. During all this time more democrats than republicans have been appointed to membership on the force. The number of democrats on the force at this time exceeds largely the number of republicans."

And this is the "republican machine" which a republican Legislature, for the purpose of increasing the republican majority in the city of New York, has instituted and put in force; and yet, with three republican commissioners, they appoint more democrats than republicans. And now, what becomes of this? The police, says my friend Mr. Brooks, are selected on party grounds. "Two persons applying for the position of patrolman, the one a democrat and the other a republican, the democrat is rejected and the republican is selected." And I put that bald statement against the truthful record I have read. Here is a man who has sat with the commission since 1860, at every meeting, and he goes on to say:

"The question of the party politics of the applicant, has never, to my knowledge, been raised or considered by the board. I have never known a divided vote on the question of the appointment of any person to membership."

Always unanimous, the democrats voting with the republicans, and the republicans voting with the democrats, and no one ever raising the question of the politics of the applicant when he was about to be appointed. "And yet this is a political machine," and yet "two persons applying for the position of patrolman, the one a democrat, and the other a republican," by this terrible party machine, the republican is put in power while the poor democrat has the republican foot put upon his neck. My friend is evidently not acquainted with the police system of New York, although he was the founder and father of it. Mr. Hawley further continues:

"Applicants are rejected at every stage of the scrutiny I have attempted to describe. Some are rejected on the chief clerk's examination, because they are not citizens, cannot read or write, have not resided in the State one year, are too old, etc., etc.

"Of those who are examined by the surgeons, a large share are rejected as unsound, too short, or too light in weight. Thus in 1866 there were passed by the surgeons, 664; rejected, 598. In 1867, passed, 566; rejected, 691. 1866 and 1867, rejected, 1,289; passed. 1,230."

It may be that these surgeons are all republicans, and that they have a way of probing and finding out the politics of these applicants, and shoving them off among the rejected if they are democrats. But I have yet to learn but that a majority of the surgeons of that board are also democrats. Mr. Hawley concludes by saying:

"The inquiry into the character of the applicants, conducted by means of the last mentioned blank, was commenced in October, 1866. Since that date seven hundred and ninety-three applicants have been subjected to this scrutiny, and ninety have been set aside by reason of the unfavorable reports, which is eight and three-quarters per cent, about, of those found by this thorough process to be qualified; a considerable number accept other employments, or for other reasons do not come forward to be sworn as members of the force.

"Citizens sometimes complain of the rigor of these proceedings, insisting that the practice is unfair or unjust; but the better judgment is that all these safeguards are necessary and proper.

"With all the care that is taken, men of feeble constitution, of insufficient education, and sometimes men of bad character and habits succeed in evading all the tests to which they are subjected, and become members of the force; greatly to the prejudice of its character and efficiency.

"When the applicant is appointed, he is placed for thirty days in the school of instruction, which he attends in the daytime, under the tuition of experienced officers, to be made familiar with his duties, and at night performs a tour of duty in company with an old patrolman. At the end of the thirty days, if he prove to be competent, he is placed on full duty.

"I am, very respectfully,

"Your obedient servant,

"S. C. HAWLEY,
Chief Clerk, M. P."

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Now, Mr. President, that is the manner and that is the form of manufacturing and making the republican policemen in the city of New York, and the condition of the force to-day will satisfy even an unpracticed eye that the force has been selected with the greatest care. Approach any one of those men upon any one of the streets in New York, you being a stranger, and ask him your nearest way to any point in the city, and you are met by a gentlemanly response. You are told the best route by car or stage to take to reach it, and you are shown every facility that any person is entitled to from a public officer. They are not the political rabble of which this Convention might have supposed them to be composed, upon hearing the remarks of my colleague [Mr. A. R. Lawrence] and others upon this floor. They are not the political rabble which were appointed by the mayor, recorder, and city judge of the city of New York, known as the municipal police. They are not appointed upon any political ground, and I know from my own investigations, that in some wards of the city of New York the democratic policemen outnumber the republican policemen as three to one. In my own ward, which is the strongest republican ward in the city of New York, the republican policemen, as compared with the democratic policemen, are not in a majority. And there is not a single ward in the city of New York, as I am credibly informed, where the majority of the policemen are republicans. Besides, they never mix in politics. They have a right to go up to the polls, as any other citizens, and deposit their votes. I am glad that right is conceded to them. They have that right but they never attend as politicians at public political meetings. I am glad that the police of New York has been kept free from party politics, and it was to take it out of the slum and out of the rascalities of the politics of the city of New York, that the present system was inaugurated and instituted. I could not use a more happy or a stronger argument, perhaps, than by saying just what I have said, and which, if my memory serves me right, was one of the strongest points made by my learned friend from Richmond [Mr. E. Brooks] in his argument in advocacy of this system, when a Senator of this State "that it was to take it out of the slum of political rascality in the city of New York, that we should have a system that should be free from the politicians, and under which they should not direct affairs for the benefit of any particular party." I wish he were with me now, to keep this police free from party politics, instead of trying to put it back under municipal and political control. I have no objection to the mayor of the city of New York being a member of that board; I think he ought to be. But that system, to which we are indebted for our protection by day and by night, which shields us from the robber, which shields us from the garroter, which shields us from the midnight assassin, so that when we walk home at a late hour of the night, and meet one of these men in blue we feel a safety creeping over us—that force, that police power, we want kept free from party contaminations, and it can only be done by keeping the system which has shown for the last ten years, when the commissioners were not only in a republican majority, but when every member of the force for a number of years were republican, that it was not used for party purposes. There has never been a party in the city of New York strong enough to control the commissioners of the metropolitan police—to compel them to use their force for any party purpose whatever. It stands well in contrast with the former system. It has done all that was claimed would be done by it when my friend, Mr. E. Brooks, in the Senate, so ably advocated its passage into life. It has accomplished all that he prophesied would be accomplished by it. It has given us a better system than we ever before had. Men may and do change, principles remain. The principles which he there enunciated in advocacy of this system will live forever, for they are the principles adapted to every age and people under like circumstances, and to which we might with very great propriety apply the song of the brook:

"Men may come and men may go,
But I flow on forever."

Mr. President, I do not intend to pursue this discussion at any great length further. I have vindicated the police system of the city of New York, which I felt it my duty to vindicate, as it had been wrongfully assailed here without proof and without justice. I have no sympathy for that style of debate which lugs in all the *ad captandum* of a political speech upon the floor of this august body. I come to this Convention not as a politician. If I could not have come here except in a political character I would have staid at home. I utterly sink the politician in the discharge of my duties here. I have nothing to do with party politics here. "They may come, and they may go." They may change a dozen times within the next twenty years; other issues may come up; other principles may arise, and other things may engross the attention than those which now control the political parties of to-day. We come here to deal with great and fundamental principles of government, such as will affect the growth, prosperity and happiness of the State for a generation of time, independent of any of the present political considerations of the day. As to the riots of 1861 and 1863, of which my friend from Richmond [Mr. E. Brooks] has spoken, I will only in passing say that they were not, as asserted by my friend, composed of the same material. The riots of 1861 were not riots. They were, in the language of the gentleman from Kings [Mr. Schumaker] last evening, a mass of "gentlemen." In a time of great political turmoil, when every body was anxious to know who was who, and what was what; who was on our side, and who was on the other side, and when that was thought to be best determined by the display of the stars and stripes on the public buildings where they had facilities to display them, there were a number of gentlemen congregated in the City Hall park—I think it was after the defeat of General McDowell at Bull Run, when there was a great deal of crowing by the copperheads of New York over the defeat, and they claimed that the war should now be at an end. Then a party of gentlemen started in the neighborhood

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of certain newspaper offices and demanded that they should hoist the stars and stripes. I was passing down from the City Hall in the pursuit of my profession when I saw standing around the office of the New York *Express* I should judge five or seven hundred men, perhaps more, I did not stop to count them. I stood on the edge of that crowd. I ascertained that they were determined to have the stars and stripes thrown to the breeze over the *Express* office, and I stood there till I saw it done, and then I joined with the others when that flag was thrown to the breeze in giving three cheers for the old flag. But my friend tells me that in that crowd some lost their watches and some their pocketbooks. Now, it could not have been composed of the same material as the crowd of 1863, for that crowd did not have watches or pocketbooks, that I saw, unless they took them from somebody else. But some of this crowd, he says, lost their watches and pocketbooks. I went away without losing mine, nor did I have any body's else in my pocket, and I did not see any body in that crowd who appeared disposed to violate the rights of property. It was as orderly a crowd as I ever saw gathered in the streets of New York. The only object was to test the loyalty of certain newspaper offices. They went from there to the *Herald* office, and there they had the stars and stripes thrown to the breeze, and then to the *Journal of Commerce* office where they had a little more difficulty in getting the flag to the breeze; but they finally succeeded, I believe, in getting the flag out there. No private rights were interfered with, and there was no necessity for the interference of the police. It is claimed, Mr. President, in conclusion, that this increased expense of the police department, as portrayed by my colleague [Mr. A. R. Lawrence] the other evening, is of such magnitude that the people have tired of it and are determined to blot it out; and yet he tells us in the next paragraph that the taxes of New York, notwithstanding this immense increase, are less than in a great many of the other cities of this State, coming down to about the fifth or sixth in rank. Now he says that the electors of the city do not like these figures, as they showed by the return of the last election. I have heard the lesson of that last election attributed to a great many different things. Now it is claimed that it was the police question, that this police system was in direct issue before the people, and that the people by their vote decided against the police system. Nothing could be farther from the truth. It was not the police. Others claimed that it was the excise law; others that it was the health law that they passed upon; and others that it was the enforcement of the Sunday law; and still others claimed that it was none of them, but it was the great national question of the negro; that that vote decided against negro suffrage; that the whole tenor and the whole voice of that vote was against negro suffrage, and that it meant just that and nothing more. It is as "elastic" and "flexible" as the judiciary section of my friend from Ulster [Mr. Hardenburgh]. You can use it for almost any purpose, and it will fit almost anywhere. Sir, that great vote in the city of New York last year was temporary and accidental. It was the result of a combination of circumstances, among which was ten thousand fraudulent and illegal votes, according to the admissions of a democratic paper in the city of New York. That result is not chargeable to the commissions in New York at all. With all the commissions that existed there, in the last election for members of Congress the republican party polled thirty-seven thousand votes in the city of New York for their members of Congress, not counting the republicans in my district who voted for Thomas E. Stewart, who was a republican, but who was nominated by the democrats, and who has voted principally with the republicans in Congress. Thirty-seven thousand independent of those; and that with all the commissions. Now how is the falling off of the republicans in the city of New York, which my democratic friend [Mr. A. R. Lawrence] talked so much about, and seemed to be so sorry for, to be affected by commissions? Mr. President, it was not the commissions. No; rum had run riot in New York. Avocations were being shamelessly prosecuted, regardless of the public morals or public health, or the restrictions or prohibitions of law. Lawlessness in those matters had been running riot in New York. The Legislature of this State, upon the application of many citizens of New York, for no purpose of creating any board, made an excise law. They forbade the selling of liquor on Sunday. They forbade the keeping open of places where liquors were sold, after twelve o'clock at night; and then made it the duty of the police to see that the law was executed. Before, it had been said, "You cannot execute a license law in the city of New York. You cannot do it. You cannot execute a law that will shut up drinking saloons on election days, on Sunday, and every night after twelve o'clock." But this abused police, this "republican" police did it. They did close the liquor shops. They did completely suppress twenty-five hundred of the worst, most corrupting and loathsome groggeries in the city of New York, and effectually shut them up. They did shut up other pest-holes, which, if allowed to be kept open, would have sent a miasma and pestilence not only through the city, but over the whole State and country. They did it promptly and effectually, as they perform every duty imposed on them by law, and they shut off the pestilence from your home, gentleman from Herkimer, and they shut off the pestilence from your home. Mr. Chairman of the committee; they did it all; the police did it; they did execute the law, unpleasant and unpopular, as it may have been. But, then, we have a population in New York, described by the eloquent gentleman from Richmond [Mr. Curtis], who are voters, and who can outvote the lovers of law and order, and they come up without regard to any former political alliance, without regard to any thing but the fancied or real interference by the execution of the excise and health laws with their business or pleasures. Our German friends who had been interfered with by the enforcement of the Sunday law were aggrieved and exasperated by what they deemed an unwarrantable and unjust interference with their natural rights, and every na-

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tionality that had been interfered with in the exercise of any of the habits of their ancestors, not by these commissions, because I have shown you what a vote we polled under all the commissions, but because of the enforcement of these rigorous laws—because, perhaps, of their too rigorous enforcement by the police. I am not advocating their enforcement. I am speaking only of causes and results. I would have a different excise law from that which prevails in the city of New York and a different enforcement of the laws. But I say this: I say it was because of that great change that was made in the city of New York, making its Sabbaths as quiet as they are in the village of Herkimer, gentlemen from Herkimer—as quiet as in any country village in the State, a quiet which had not been experienced in that city for many years—it was because this was done, because of the great change made in the habits of indulgence of this class; it was the revolution against the shutting up of all these places, that caused the temporary and accidental majority of the democratic party in the city of New York last fall; and no men were more astonished at that majority than the democratic party of the city of New York themselves. But that is the history of it, that is the reason of it, and that is the cause of it. Now, who asks for the abolition of this police system? I do not know of any citizens of New York who have asked its abolition. Delegates upon this floor representing the city of New York, as I do, ask for it. I, as a delegate here from the city of New York, protest that the people of the city of New York do not ask for it. But I tell you who does ask for it. Every rogue "that fears the halter draws;" every man who wants to keep a policy shop open; every man who wants to keep a house of prostitution open; every man who wants to commit any nefarious acts, to live by his wits and his robberies, is opposed to the police system. It is the worst class of our people who are opposed to this police system, and they are opposed to any system by which the laws are surely executed and the citizens faithfully protected in life and property. Now, I invite and challenge a contradiction of the statements I have made here in relation to the political status of the police force of the city of New York, and, Mr. President, if I am right in the statements which I have thus far made, what shall we think of the statements that have been made on the other side of this question, that these police commissioners were exercising their power as politicians, that they were obeying the behests of a political Legislature to trample upon the sacred rights of the people of the city of New York? Those rights have never been invaded by the Legislature. There has been no interference on the part of the Legislature of this State by any commission which they have established in the city of New York but what has proved a blessing to that city, but what has taken the place of something which had become corrupt and damaging, but what has been an evangel of mercy and blessing to the downtrodden and robbed people of that city—downtrodden and robbed by their own corrupt legislation, and by their own short-sightedness and folly in sending to their own local legislature characters of the stamp they do, where rules of order and decorum are adjusted and settled by the arbitrament of the flying inkstand. But this police had had imposed upon it other duties. The Legislature, in its wisdom thought proper to create a bureau of election statistics and made that bureau a part of the duties of the commissioners of police of the metropolitan police district. We have now what is complained of by the gentleman from New York [Mr. A. R. Lawrence], and of which he says in such emphatic language, "This is not right"—the appointment of inspectors of registry and election and canvassers and poll clerks of election. But how are those appointments made? One would suppose from hearing my friend [Mr. A. R. Lawrence] that they were all of one political party. Each party, as my democratic friends here will bear me witness, each party sends to the police commissioners a list of names for the appointment of inspectors, canvassers and poll clerks. There are four inspectors, two canvassers and two poll clerks for each election district. The republicans also send their list and the commissioners take two inspectors from the democratic list and two from the republican list; one canvasser from the democratic list and one canvasser from the republican list, and one poll clerk from each of these lists, for each election district in the city of New York. Does the democratic party want all the inspectors; do they want all the canvassers; do they want all the clerks? I am a republican, and I believe that the republican party is as honest if not the most honest party that ever had an existence; and yet I would not trust that party with all the canvassers, and all the inspectors, and all the poll clerks. It is a power that ought to be divided between the two parties, and it is properly and rightfully divided when we make them half of each political party, each party choosing their own men and the police simply selecting them so that they shall be officers of police, and so that they can control their action and their report. The boxes are kept at the police stations. At sunrise on election morning these glass boxes are delivered to the inspectors, who have charge of them until sundown, when they are passed over to the canvassers. The canvassers are protected by the police during their canvass, and as soon as finished the poll clerk hands to a policeman the result of the canvass, signed by both poll clerks, and transmits his original tally of that canvass to the bureau of election statistics, and that policeman at once takes that certificate to head-quarters, and there it is deposited in this election bureau. This prevents fraud by these canvassers colluding together and finding a vote for any candidate that never was polled for him; for this poll clerk's return is in the bureau of election statistics in the head-quarters of the police department, and is a check upon any fraud of the canvassers. I tell you, the system is complete, gentlemen. I tell you that it will prevent, as far as human ingenuity, and human foresight and human judgment and precaution can do it, frauds in our elective franchise; and without this protection we are gone, and our boasted right of the elective franchise will become a mockery and a delusion. Do we

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want a board of police or any other board that will give to one political party, I care not which it is, all these officers, all these tests upon the purity of the elective franchise? God forbid! But, sir, although not having gone through with the argument that I sketched for myself upon this occasion, I have trespassed upon the time of the Convention to a greater extent than I had intended. I will therefore bring these remarks to a close by saying that I trust that this first section of this article may be stricken out, and that in its place we may incorporate a system which will be more in accordance with our republican institutions, which will give greater security not only to the people of the city of New York, but to the citizens of all the State and all the nation whose business calls them so frequently into the metropolis of the nation. This can be done; this, by a wise and prudent consideration, will be done, and this being done will be satisfactory to all concerned, and will prove a bond of peace, harmony and good will between all sections of our great and growing State, binding them together, not by small geographical localities, but by one common sentiment of pride and jealous care for the protection, prosperity and progress of every city, village, town and inhabitant, and because they are integral parts of our beloved commonwealth.

Mr. HARRIS—Mr. President —

The PRESIDENT—The Chair will state the pending question. The first section is under consideration. Are there any amendments proposed to this section?

Mr. HARRIS—I have no desire at all, Mr. President, to prevent any gentleman from expressing his views upon the question pending. This motion of the gentleman from Steuben [Mr. Spencer] —

The PRESIDENT—The Chair would inform the gentleman from Albany [Mr. Harris] that that motion is not now pending. There is no motion before the Convention; but amendments are in order to the first section of this article. The Committee of the Whole having made no report, no motion made in it is now before the Convention.

Mr. CURTIS—I propose a substitute to the first section now under consideration.

The PRESIDENT—The gentleman from Albany [Mr. Harris] has the floor.

Mr. HARRIS—I was about to move the previous question on the adoption of the motion of the gentleman from Steuben [Mr. Spencer], but if that is not now pending, I have no motion to make.

The PRESIDENT—There is no such motion before the Convention.

Mr. CURTIS—I propose as a substitute for the section under consideration the first section of the minority report signed by Mr. Murphy, document No. 109. I think it will be found Mr. President, that this section covers all the desirable points that are sought in the section reported by the majority of the committee, except such as have arisen during the debate. It is more precise in its language, and seems to me altogether better. The section reads as follows:

SEC. —. There shall be chosen every two years by the electors at large of every city, a mayor, who shall be the chief executive officer thereof, and whose duty it shall also be to see that the duties of the various city officers are faithfully performed. He shall have power to investigate their acts, to have access to all books and documents in their respective offices, and to examine their subordinates on oath. He shall also have power to suspend or remove such officers from office, whether they be elected or appointed, for violation or neglect of duty, to be specified in the order of suspension or removal; but no such removal shall be made without reasonable notice to the party complained of and an opportunity afforded him to be heard in his defense.

This seems to me, Mr. President, to be a precise definition of the proper duty of the mayor of a city more acceptable to me than that reported by the majority, now pending. I therefore offer it as a substitute.

Mr. OPDYKE—If it is in order I move to amend by substituting the first section of the article reported in document No. 138—another minority report from the Committee on Cities.

The PRESIDENT—That motion is in order.

Mr. OPDYKE—I make that motion for the reason that I desire an expression of the judgment of this Convention on that report, as a whole. I think this Convention will perceive that both the majority report and the minority report, the first section of which I now offer as a substitute, present more comprehensive and specific plans of city government than that offered by the gentleman from Richmond [Mr. Curtis]—the minority report signed by Mr. Murphy. I think it is proper that this Convention, after the long discussion we have had on the whole subject of the government of cities, should give a vote on each, and thus manifest its preference between the three plans. I will not detain the Convention by repeating any arguments that I have made in support of my proposed substitute, more than to say that, in my judgment, it presents a plan that will produce a better state of things than either of the other plans before the Convention; and I am satisfied from the debate that in all its leading features, save one, the sentiment of this Convention concurs with me in the view which I take, and concurs with me in the propriety of framing, as perfectly as we can, a general plan for our city governments, to be filled up by the Legislature. I think it concurs with me in the propriety of excluding from that plan and from the power which that plan will confer upon localities, the police interest, the sanitary interest, and the commercial interest, being each and all interests in which the whole State are concerned. I am aware that the dividing line between interests which are purely and solely local—interests in which the residents of localities alone are interested, and those which by connecting links affect interests in other parts of the State, is most difficult to define. I am aware that the term "commercial interests" is not as definite and distinct as I should desire it to be; and if this report should be adopted I am free to say that on that point and some others, amendments will, in my judgment, be necessary. I think, for ex-

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ample, that the fire department in cities, and especially in the city of New York, which protects the property there belonging not only to the citizens of that city, but to the citizens of various parts of the State, and of the United States, is really a commercial interest—an interest in which the people of the whole State are concerned. For that reason I am inclined to believe that it is proper that the central government which represents the whole State should have some control over that interest. Now, sir, the only point on which I think this Convention is not prepared to go with us in this report is in that feature which requires the boards of aldermen and the comptrollers of the cities of New York and Brooklyn to be elected by the tax payers. I name these two cities because in regard to them I have better knowledge and can speak with more confidence. For one I should be perfectly content to apply this rule to every city in the State, but with regard to that point I think that in relation to other cities, those by whom they are more immediately represented will be better able to speak in their behalf. I desire to say a few words in relation to the proposition to engraft into the Constitution a feature that will make the government of cities one of checks and balances. The proposition is that the government of a city, so far as regards its mayor and one branch of its legislative power and and all its subordinate officers, shall be controlled by the voice of the whole body of electors, but that, on the other hand, there should be a check to the power and the action of that body of electors through a legislative board and a comptroller chosen by those paying taxes. As I have said before, this question of the government of cities is not a question affecting civil or political rights. If it were, I would be the last member of this Convention to make the proposition. But, sir, I beg to repeat that we are here to look for the best means of securing good government, good government to the State, good government to every locality in the State; and the question for us to determine is whether this plan is best calculated to do it; and also whether it will abridge any of the rights, whether it will infringe any principle of justice with regard to that class of electors who are excluded in the election of the board of aldermen and comptroller. I maintain that it does not abridge their personal or their political rights. All those are under the safeguard of the central government of the State. They are subject to the laws of the State in all their civil and personal rights, in all their social relations. They are subject to the judiciary of the State in the adjustment of all those rights. They are subject to the police force created by the State, in their personal rights, their protection from trespass, and their freedom from arrest. In all regards, therefore, save that which relates to property and to property alone, they have all the rights of those who vote for members of the board of aldermen. Now, sir, we have but to look back a little to see what has hitherto been the sentiment of the people of this country. Let us look back and see what was the sentiment of those who founded our government theoretically on the broadest principles of political equality. We find that when they came to put that government into action, they began with the elective franchise, which, I repeat, is but a franchise, to be conferred or withheld, as the public good may demand, they began on the basis of property alone, that those who owned, or were in some way connected with property, alone should vote for any elective officer. We have been going down, extending that franchise, until we have made it to comprehend almost every adult male citizen. Sir, the Congress of the United States, in my judgment, committed a great and a dangerous error in conferring that franchise on nearly half a million of men just emerged from the benighted ignorance of slavery. I believe it was a serious error. For one, I want to look at this question with my best judgment, and provide the best government for cities that can be provided. If any limitation that does not infringe personal rights will give us more justice and a better government in cities, I want it adopted. I desire now to see how many members of the Convention agree with me in that proposition. For that reason I hope that the substitute I have offered will receive the support of every member who conscientiously believes it to be the best method of securing the end we all desire.

The SECRETARY proceeded to read the substitute offered by Mr. Opdyke, as follows:

SECTION 1. The executive power in cities shall be vested in a mayor, who shall be elected by the electors of the city, and shall hold his office for one year. He shall take care that the laws and city ordinances are faithfully executed. He shall receive at stated times for his services a compensation to be established by law, and which shall be neither increased nor diminished during the period for which he shall be elected. He shall not receive during that period any other emolument from the city, nor shall he hold any other office.

Mr. CURTIS—The section reported by the minority and signed by the honorable gentleman from New York [Mr. Opdyke] is evidently the work of great experience and of great thought. For myself, sir, when it comes to the test question which he proposes to apply, and which I will remind him is not raised in the first section, which is now under consideration, I shall certainly support the views which he has so strongly, and, as I think, so conclusively urged. There are other sections of his report which are deserving of the same consideration; but in the specific section under consideration, it will be observed that the report signed by the gentleman does not provide for an emergency which is the occasion of very general complaint. One of the chief complaints against the present position of the mayor of New York is, that he is really without power. The article reported by Mr. Murphy in the section which I offer as a substitute, gives to the mayor the immediate supervision of the other city officers, the local, immediate supervision; and it is in that respect, as it seems to me, preferable to the section reported by the gentleman from New York [Mr. Opdyke].

Mr. OPDYKE—The gentleman from Richmond [Mr. Curtis] will find by turning to the report, that in another section that is provided for.

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Mr. CURTIS—It is unquestionably true, as I said before, that that article further provides for the necessity; but as I understand the gentleman from New York [Mr. Opdyke], he wishes to make this a test question, and it does not contain a certain point in his article which is very essential if not absolutely essential to the coherence and perfection of that article. I therefore insist upon the amendment I have offered.

Mr. DEVELIN—I would like to ask the chairman of the committee [Mr. Harris], if there is any essential difference between the article proposed by the committee in the majority report, and that of Mr. Opdyke, so for as regards this section, except the term of office?

Mr. HARRIS—That is the essential difference between the two sections. The first section of Mr. Opdyke's report makes the term of office one year, and has nothing in it prohibiting the re-election of the mayor. The report of the committee, as the gentleman knows, is three years and ineligibility. The section of Mr Murphy is two years and no ineligibility.

Mr. GROSS—Mr. Chairman, I am in favor of the majority report of the Committee on Cities, with the reservation that I should like to see substituted for the first section of the article something like the proposition of the gentleman from Kings [Mr. Murphy]. My own democratic convictions, as well as the history of governments, teach me that decentralization of power and direct participation of the people in the management of public affairs form the true principles upon which a free and popular government ought to be established, and which should guide its administration and development. The more we strive to familiarize the masses with the management of public affairs, the nearer we come to the ideal of popular government. I have followed this principle since my entrance into public life, and I hope to adhere to it to the end of my days. To trust to any part-representative of the great body of the people—be it a Congress, a Legislature, an Executive of a State or of the nation, a judiciary or a convention—as little discretionary, implied, or arbitrary power as is compatible with a practicable and successful direction of public affairs, is, in my opinion, the great end to be aimed at, is republicanism to the core, is democracy embodied in public life, and comes nearest to the fulfillment of the manifest destiny as pointed out for this great republic by the Declaration of Independence and by the Constitution. And although I grant that circumstances may arise where the concentration of greater power in the hands of a few or of one representative of the people is made necessary or expedient, even in a republic, the fact of the existence of a standing army and navy in our own midst, and of its direction, under rules and regulations dissimilar from those applicable to civil service, is a perennial illustration of the case, I am nevertheless opposed, as unrepublican and anti-democratic, to all special pleading toward that end, and am particularly surprised to see gentlemen indulge in such special pleading for centralization of power contrary to the will and wishes of those to be affected by it, who belong to a party that has inscribed on its banner the motto, "equal rights," and "universal suffrage." I appreciate and cherish this motto of the republican party, and though a member of the democratic party, I have lived up to it. Dissenting in this respect from many of my fellow democrats, I have expressed myself in favor of it, not only before this honorable body, but as early as 1866, and long before the republican party was a unit on it. But in making this declaration for "equal rights and universal suffrage," I was really in earnest about what I said; I meant "equal rights and universal suffrage" *for all*, for white men as well as black men, democrats and conservatives as well as republicans and radicals, southerners as well as northerners—meant it for those who have been loyal always as well as for those who had been disloyal once. I did not indulge in any special pleading on this great point of extending and enlarging our theory and practice of popular government and people's rights; I did not demand exceptions here and prohibitions there; I did not understand it that white men who had rebelled against their government and got terribly punished for their crime or folly should be visited with disfranchisement, and that black men who had aided them in their rebellion should be rewarded with enfranchisement. I could not adopt this view of the case, as I had never been made sure on that one point: whether there had been more involuntary white or black rebels at the South. Being uncertain on that point, and withal abhorring the idea that a proposition at once so noble, human, and liberal as the one above cited, could include the mental reservation of vindictiveness, proscription and revenge, I was verily shocked at making the discovery that this republican motto in reality meant all what it expresses for the negro, but military despotism, slavery and ruin for the white man of the South, and nothing at all for the naturalized Americans all over the country, who, as I venture to suggest, had certainly done their share in the preservation of the government, and who had neither been voluntary nor involuntary aiders and abetters of the rebellion; and who, also, as I dare further submit, contribute as much to the development of the resources of the country as the extolled African, or, perhaps, a little more. Well, sir, this superb republican motto proved in the end nothing but special pleading for one class of people to the disparagement, humiliation, and injury of a second, and the neglect and discountenance of a third one. After having discovered the true meaning and intent of this demand for equal rights and universal suffrage by our republican friends, I could no longer be astonished at the advocacy here on this floor, and in reference to the pending subject, of a policy which is in flat contradiction to all and every thing these gentlemen and their party endeavor to carry out and perpetuate in another section of the country. While gentlemen in this hall array themselves against the full and proper exercise of self-government on the part of the most intelligent, practical, enlightened, successful and progressive community on this continent, and perhaps on the whole face of the earth, they claim all that is denied to the citizens of the metropolis for the so far assuredly most uneducated, ignorant, indolent, unsuccessful and depending class of people elsewhere. Indeed, sir, the repub-

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lican programme on matters of self-government, as laid down for the black man of the South, is irreconcilable to the one recommended for the poor whites of the city of New York. If what has been thrown out here in regard to the propriety or necessity of guarding a great community against its own failings and implied incapacity, shall be received as the naked truth and veritable state of facts, a more scathing rebuke and forcible condemnation of all that the republican party has aimed at and carried out in a national respect, has never been uttered. Now, sir, I can't appreciate such one-sided rule. I can't perceive the terseness of an argument that denies to educated self-depending white men what it grants to ignorant, helpless negroes; and yet, sir, that is exactly the position in which I find my respected friend from the great city [Mr. Hutchins]. He pleads against self-government of more than one-third of the inhabitants of the State, if we speak of the cities of New York and Brooklyn alone, and of more than one-half of the same if we include all the other cities from 5,000 population up. And what are his reasons for so doing? First, and above all others, a tender solicitude for the continuance of certain commissions with which the State Legislature has saddled the great cities. His special pleading in their behalf was ingenious and eloquent, but it failed to give us the sense of the communities in question, and was not overscrupulous in the statement of certain facts. From a few notes taken of the speech of the learned gentleman as he delivered it, I shall endeavor to prove the correctness of this, my assertion. Should I misinterpret any of the utterances of the honorable gentleman it will be unintentional and, as I hope, be pardoned on account of my somewhat impaired hearing. We are told that the city of New York has among its 132,000 voters 77,000 of foreign-birth and only 55,000 native born. Believing that this statement is substantially correct, I cannot see what it has to do with the government of the city, if not made for the purpose of proving from this great proportion of inhabitants born in other countries the propriety or necessity of State control over it. I shall answer for one portion of this naturalized element of population, representing upward of thirty thousand voters, that it is orderly, peaceable and law-loving to an extent, that, but for the chicaneries of an injudicious excise law and similar reprehensible enactments, the smallest proportion of arrests have uniformly been made amongst it. Two of the most populous and crowded wards, inhabited by the proportionally poorest classes of people, the eleventh and the seventeenth, containing one hundred and fifty thousand souls, on a comparatively small area and in hundreds of crowded tenement houses, are, with the exception of an extreme river portion, called Mackerelville, the safest to walk through at all hours of the night. I have lived in these two wards since 1851 and know them intimately. These two wards are a little muddy, because generally neglected by our aristocratic high-toned street sweeper; they are occasionally a little noisy on account of the many social fellows dwelling therein, who like to sing and to dance, and love music and fun; but as stated, they are safe to walk through day and night, as I best know from my own experience. Now, five-sixths of the people of these wards are either foreign born themselves or descended from foreigners in the first generation. If they are orderly and law-abiding to such an extent, is not that proof of their capacity for self-government? Bawdy houses, gaming tables, sporting places, Peter Funk shops, cock pits and similar nocturnal or forbidden retreats and abodes of the rowdies and lawless, are almost unknown in these wards. Very little law breaking, indeed, would occur, if not occasionally an indiscreet or impertinent guardian of the excise regulations or a drunken, half-crazy, murderous patrolman—I hint to facts not to fictions—would create a row and exasperate the people, as has been the case but a few weeks since in the seventeenth ward, where such a minion of Kennedy knocked down and shot at every body coming in his way, going so far as to run out of his district in order to have the satisfaction of clubbing a citizen, who was just in the act of helping his wife and little child from a car and over the slushy street to the sidewalk, while a moment after that a citizen, who gave vent to his indignation, received a mortal shot wound in the bowels, his life being still in danger at this very hour. Sir, the apologists or admirers of the New York police may call outrageous occurrences like this one, exceptions, and pronounce the general conduct of the police exemplary over again. I answer them, that such outrageous conduct, on the part of the police is, to my positive knowledge, of almost daily occurrence, while riots, of which gentlemen talk so much and know so little authentically, are really rare exceptions in such a great city with such a mixed population. Yet I do not make this assertion for the mere purpose of contradicting what has been said by other gentlemen on this floor, but I am ready to substantiate it a hundred times, if the necessary allowance of time for collecting such evidence is granted me. The number of arrests made in a month or in a year by the metropolitan police force are paraded before us in order to serve the twofold object of showing at once the efficiency of the police and the viciousness of the people of New York city. Sir, how are these fifty thousand arrests made up? I give you one instance for a hundred that I could give to show how they are made up. One Sunday evening were congregated at the Dramatic Hall—a respectable public place in Houston street, near Bowery, the abode of a number of singing societies—the members of a German glee club, for the purpose of practice and rehearsal. One of the benches for the attending audience—friends of the singers—was occupied by a bevy of lovely, innocent girls, just arrived from the old country and brought hither by some of their relations. All at once, while chatting away or quietly listening to the performances of the singers, these young ladies, with many others, were rudely set upon by a squad of police that broke into this private room, dragged out of the building and over the streets to the station house, here to be thrown into a dungeon reeking with bad odor and swarming with vermin, and to be locked up for the night. While the arrested New Yorkers, used to such performances of our valiant police, reconciled themselves to their fate,

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these unsuspecting young ladies were almost frightened to death, and given up to utter despair throughout the night. That was the reception these cultivated and decorous strangers met with in a country which their parents had been induced to seek on account of the much praised rights and liberties enjoyed by its citizens. They had lived under a monarchy and had all their lifetime been accustomed to a rigorous, stringent system of police, but a rudeness and brutality as exhibited by our metropolitans, was new to them, and, of course, gave them a poor idea of the freedom, rights and privileges of American, or rather of New York citizens. Now, sir, this is the way in which, with more or less variations, the bulk of the fifty thousand arrests is made up Ten, twenty, or more, orderly, harmless and decorous people are seized upon at once by a brutal police, dragged to the station-house and locked up for no reasonable cause or excusable object whatever, next day or month to be paraded in the police reports as so many arrests for "disorderly conduct," "disturbance on the street," violation of the excise law," "drunkenness," and so forth. Sir, if you will examine a specified report on these trumped up arrests by the metropolitan police, you will probably find that three-fourths of them all fall within the category just mentioned, that is, would have been found unnecessary and easily avoidable by a police instructed to treat with respect and to protect the unoffending, orderly citizen under all circumstances, instead of being instructed to work year in and year out, directly or indirectly, for political effect and party purposes mainly. Great are these metropolitans in the prosecution of singing societies, excursionists, lager-beer venders and other harmless people, but comparatively little they achieve in the way of detecting or arresting theft, burglary, murder and arson, etc. There lived but a few weeks ago, near the corner of Eighteenth street and First avenue, an unobtrusive young man, butcher by trade, happy in the consciousness of carrying on a prosperous little business in his line, which made it possible for him, from time to time, to send money to his poor, aged parents in far off Hungary. The sole cause to mar the happiness of this dutiful son was the infection of the street corner near his stand by a number of yonder "loafers," who are the curse and the reproach of this great country. A more vicious, cruel, fiendish, heartless and abject species of human kind, with the exception perhaps of the Thugs of the far East, is not to be found on the face of the globe. Uniformly born and reared in the place which they infest, our loafers are, without hardly an exception, of either American, Irish or German parentage. Very often respectable and well to do parents have the misfortune of seeing turn one of their once promising sons into a forlorn loafer; and, what is still more painful, into one of the most reckless and cruel kind, because he boasts of a home, of money, friends and protectors. With a police organization having a higher aim than the prosecution and arrest of the most harmless of real or constructive offenders, the terrible American loafer would soon cease to exist; with a police organization conducted by keener intellects and loftier minds than those of ill-tempered and vindictive Mr. Kennedy and coarse and vulgar Mr. Acton, the loafer of New York city would soon become an impossibility. Lamented, murdered Scherr, the young butcher and good son above alluded to, would live to-day, a bright example, though an humble member of society, of dutiness and social virtue, if the police organization of the city of New York were a little more than a brute force of muscle, trained and drilled for extraneous and minor purposes, rather than the more essential, moral and material objects and interests of a great community. Had there been a lager-beer shop in the neighborhood of the corner of Eighteenth street and First avenue, into which some thirsty souls would have stolen on some Sunday afternoon, Mr. Kennedy's man would surely have detected it and filled up the station-house with one or more of the delinquents; but he did not notice the for-weeks-continued and daily-increasing intrusion, insolence and threats of a set of loafers in front of the butcher-shop and inside of it, nor did he mind it when made aware of and appealed to. To this man of Kennedy it amounted to very little, that weeks before the murder, committed under his very nose, one young Kelly seized one of the knives of the good butcher, who could have crushed the serpent between his fists, brandishing it before his eyes, and exclaiming "I have a notion to run it into you!" or using similar words. Well, the loafer made good his threats some weeks later; he run the knife into the stout and healthy body of the butcher, sending his dove-like, innocent soul to its creator, and to a far off, hopeful, old couple the crushing news of the untimely, cruel end of their good son. Mr. Kennedy's man was close by; but, alas! he came a few minutes too late, and could do nothing but receive the last gasp of the dying butcher, while the murderer made haste to reach the home of his wealthy parents in Sixteenth street, to put money in his pocket and to make off for parts unknown, not being arrested to this very day, or at least not when I left New York city. There are many in New York, more particularly acquainted with the facts and circumstances appertaining to this murder, who charge it to the account of the police, and I am one of these. Sir, it has become my lot to be a daily and constant observer and interpreter of events and recorder of facts, and I assure you, that in this, my capacity, I would be able to heap upon this lauded metropolitan police such an overwhelming array of facts, dating, too, no further back than the commencement of this present year, and all going to testify its incapacity, short-comings and delinquencies, that your sense of justice would revolt at the thought of being asked to force such an inefficient and costly system much longer on an unwilling community. But I cannot at present continue my narration of occurrences of quite recent dates, as I have to follow my excellent friend from the city, and my eloquent friend from Richmond, back to the year of 1863, *to the great riot*. I should have refrained from alluding to, or speaking of this bloody, terrible catastrophe, at once so injurious to the good reputation of the city of New York, and so humiliating to those in authority at the time, but for the persistent endeavor to

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palm off this riot to the uninitiated as a trump card in favor of the metropolitan police, its valor, efficiency and commendable appointments. And in order to show that my remarks are not to be taken in any partial or partisan light, I ask leave to call the attention of this honorable body to the fact that, in 1863 the board of commissioners of the metropolitan police was, to my knowledge, equally divided between the two parties.

Mr. HUTCHINS—The gentleman is evidently in error in that statement. The board was not equally divided in 1863. The law was passed in 1864, dividing it equally, and— .

Mr. GROSS—Then I am mistaken.

Mr. HUTCHINS—The republicans are chargeable with all the blame for what occurred at the time.

Mr. GROSS—If any of the gentlemen dwelling on this riot would have given us his own observations, or even quoted from the notes of reporters taken at the time of its occurrence, I should have received what was so stated with all due respect and deference; but to be wanted to listen in this regard to that most bare-faced piece of self-praising, white-washing effrontery as presented in the report of the police commissioners, and read on this floor, is more than I can silently submit to. Before proceeding with a narration of facts and events, all of which having come under my own personal observation, I must state that only in its very earliest stages this great riot has had a somewhat political aspect or character owing to the popular indignation excited by the unfair drafting in the city of New York—now no longer a disputed point—but that all the subsequent phases of this dark catastrophe, were nothing but a revelry or carnival of the very dregs of the metropolis. When on the morning of the 12th of July, 1863, (I guess I am correct in the date) news was brought to my house (gentlemen have heard me state that I live amongst the poor people and laboring classes) that the workingmen in the great foundries and machine shops—the Morgan works, the Novelty works, and other large establishments along the East river, then and there engaged in the manufacture of iron-clads and other war material for the federal government—had left their work in order to join in an attack on the draft stations, I knew that we had to prepare for the occurrence of most serious events, for the popular ire on the subject of the draft had risen to its fever heat and become almost uncontrollable; and I knew, too, that the workingmen in question were neither rebels themselves nor rebel sympathizers. In spite of the protestations of some one having an interest in the preservation of my limbs and life, I got it into my head to become an eye witness —or reporter, if you please—of what might come to pass. Having dispatched some necessary business at my office, I hastened up town, being joined by a courageous young friend, a disciple of the goddess of justice, and well known to the gentleman from New York [Mr. Hutchins]. The running of cars having ceased already, we had to walk on foot, and had not proceeded far beyond Union Square, when we heard that a terrible riot was already raging up town, that several drafting places and station-houses had been fired, that the police force had been beaten back, Superintendent Kennedy nearly killed, and so on. While wending my way up town, through crowds of people who had left their houses and were occupying the sidewalks and the middle of the streets, I noticed a large number of workingmen making their way back to the lower parts of the city. Most of these men were armed with clubs, iron bars, shot guns, and other weapons, satisfying me that in them I had before me the draft rioters proper, who, having carried out their single object were returning to their work or to their homes. From Twenty-third street up the city was totally in the possession of the mob. In the neighborhood of the street just mentioned, I beheld the last of the blue coats. Passing thus from First avenue to Second and Third avenues, I reached Forty-eighth street to find myself in the very center of conflagration and riot. A crazy Virginian, the same one who has had to serve as an emissary of rebeldom and leader of the mob, was just holding forth from the roof of a cattle-shed to a motley crowd of all kinds of people, good as well as bad, innocent as well as guilty ones. Passing through this scene of fire and excitement, I reached Fifth avenue, stationing myself, with my companion, against the railing of the negro orphan asylum. To my right, near Forty-fourth or Forty-fifth street, some firemen were seen halting with their apparatus, without making an attempt to reach the seat of the conflagration or to save even the little wooden shanty right in their front, which had just been fired by some urchins, led on by a single grown-up loafer, who probably desired to be avenged on the poor grog-shop keeper for giving him no trust. [Laughter.] At that moment they were standing on the roof of a rickety awning in front of the building, knocking in the windows in order to make the fire burn quicker. As soon as the flames burst forth from the windows, the boys and their leader jumped to the ground and looked on for a moment, when all at once the long-coated, short-built and insignificant loafer gave, with a piece of wood as his formidable weapon, the signal for an attack on the asylum. Myself and friend, shamed and mortified at such a spectacle, had to move on to make room for the assaulting incendiaries, at that moment scarcely a match for half a dozen valiant policemen. But there were none near or far, and in less than an hour's time the asylum was ransacked and burnt to the ground. Moving down Fifth avenue, where every thing was quiet, I reached Seventh avenue and Thirty-fourth street. This avenue, in which an arsenal is located that was in danger of being attacked by the mob, had been given in charge of my German friend, Colonel Louis Schirmer, then in the city on recruiting business for the Fifteenth heavy artillery. Explaining to the surrounding mob in his broken but forcible English, what it would amount to if they forced him to let his howitzers open their mouths, he had no difficulty to hold the street and protect the public property with a small number of his men, till the arrival of the military. When reaching Twenty-eighth street and Broadway, a large corner house used as a draft station was found enveloped in one sheet of flame, and

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surrounded by a numerous mob. A squadron of dragoons, mostly Germans, again, were just riding up to clear the streets, which they did without difficulty. But no policeman to be seen near or far again. Thus matters stood till I reached the neighborhood of Fifth avenue and Twenty-fifth street, Union square and Broadway, etc., when my eye met the blue coats once more, and in particular a very strong body of them in the neighborhood of the residence of our respected associate, the then mayor of the city of New York, who had been threatened by an unreasonable mob, though having done harm to no man. Sir, I did not rise for the purpose of denying moral or physical courage to Mr. Kennedy and his men. I know that they behaved like brave men, that they exposed their lives for the sake of the security and protection of the citizens and their property—that many of them got wounded and some killed in the affray. But, sir, I did rise for the purpose of impeaching the system, the character, and the discipline of this metropolitan police; I did rise for the purpose of stating here on this floor that, notwithstanding the self-sacrifice and courage of individual members of the police force, it was owing to its general inefficiency, springing chiefly from its unpopularity, that after the draft riot proper being over, the scum and dregs of the population, all the thieves, robbers, burglars, incendiaries, murderers and loafers among it and leading it, could, for the two subsequent days, become perfect masters of a large portion of the city, and enact unheard-of atrocities and outrages. Sir, I have seen all this with my own eyes; I have witnessed partially or wholly the perpetration of deeds, the recollection of which makes me shudder now; I have noticed hyenas in women's garb, and monsters in the shape of men, and I could not help trembling with terror at one time, and shaking with indignation at another, for it stood clearly before my mind all the time that it would have needed a popular and trusted police force only, with its proper chief, the mayor of the city, at its head, and legions of courageous and willing citizens at his disposition, to crush to atoms a tenfold more formidable mob than the one I beheld during the 12th, 13th and 14th of July, 1863, holding at bay and totally enervating and demoralizing the police until brought down and subdued by the balls, grape and canister of the military. Sir, what is the character and the standing of this metropolitan police? What is the cause of its proving like a straw in the stream during a trying emergency? It is its estrangement from the citizens; it is the lack of confidence in it on the part of the people, and the want of regard for persons and rights on the part of the police. This metropolitan police has become a foreign body, an inimical institution in the eyes of the New Yorkers, hated heartily, dreaded all the time, and tolerated in the hope only of a more or less speedy and thorough change. The discipline of this police is most unfortunate; its temper, disposition and bad humor would not be tolerated for a day in a monarchial city like London, Paris, Berlin or Vienna; it is an enigma that it has been suffered thus far in a free and self-governing community like New York. Clubbing and knock-downs are the order of the day, and shooting is no longer an exceptional or rare occurrence. No man, whatever be his station in public life or society, dare to correct, or to expostulate with a mistaken, indiscreet or unnecessarily brutal patrolman without being, if not personally known to the latter, in imminent danger of being knocked down at once. In fact, a New York policeman, thanks to the system, discipline and routine of Messrs. Acton and Kennedy, is no longer looked at as a protector and friend, but as an enemy by hundreds of thousands of law-abiding and order-loving people. We desire and do want a strong and vigilant and effective police, but we do not want to have it transformed into a task-master, spy, tyrant or brute. Of all kinds of despotism and brutalism that of a misdirected police is the most intolerable. Sir, let the wishes of my honored but mistaken friends, who have taken up the defense and laudation of this police, be granted by this body, and I venture to predict that the revised Constitution will not receive twenty-five thousand out of one hundred and fifty thousand votes in the cities of New York and Brooklyn. It is not the question whether we shall keep a board of police commissioners or have something else in its place; but it is the question whether that institution shall be the creation of State authority and partyism, shall stand in the character and exercise the functions of a hostile garrison, or whether it shall be regarded as the trustworthy guardian of public and private property and as the cherished and beloved friend and protector of every individual citizen who obeys the law. Such a police would be a blessing in a city like New York. The present one is partially a curse, partially a persiflage on what it ought to be. A great many other things have been said and assertions advanced by the honorable gentlemen from New York [Mr. Hutchins] and from Richmond [Mr. Curtis], to which I might reply; but having engaged the attention of this Convention, and challenged the kind indulgence of much abler debaters of the pending question for a sufficient length of time, I shall resume my seat for the present.

Mr. FRANCIS—Deferring to the views of others with whom I agree in the main, and consulting also my own convictions of duty after listening to arguments on the subject, I shall forego my intention of offering the sections of the present Constitution in reference to the government of cities, as a substitute for the report of the chairman of the committee [Mr. Harris], and shall support the proposed substitute offered by the gentleman from Richmond [Mr. Curtis], namely, the first section of the article proposed by Mr. Murphy in his minority report. As other sections are presented affecting the vital questions at issue, I trust that this Convention will assert distinctly the principle of State sovereignty as opposed to the proposition of erecting and constitutionalizing petty states or principalities, with independent and dangerous powers, within the body of our commonwealth. We want no divided sovereignty, parceled out to localities, to invite sectional strife and possible bloody collision, as in the case of the late rebellion, wherein the same doctrine of divided sovereignty was sought to be enforced by a terrible war, whose

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calamities are still deeply felt by a suffering country, and by thousands of stricken and bereaved households. Let us here and now assert the sovereignty of the whole State over its whole territory for the protection of all its citizens, and to secure the ends of good government, local as well as general.

Mr. M. I. TOWNSEND—I move that this Convention do now take its usual recess. It is within two or three minutes of the hour.

There being no objection,

The Convention took a recess until seven o'clock P. M.

EVENING SESSION.

The Convention re-assembled at seven P. M.

Mr. AXTELL—I move that the Convention take a recess for fifteen minutes.

Mr. E. BROOKS—Oh, no.

Mr. S. TOWNSEND — Occupy the time by making a speech. [Laughter.]

The question was put on the motion of Mr. Axtell, and it was declared lost.

Mr. M. I. TOWNSEND—I hope the Convention will adopt the amendment moved by the gentleman from Richmond [Mr. Curtis]. I find by examining the first section as reported by the gentleman from Kings [Mr. Murphy] in his minority report, that his section avoids the difficulty suggested by the gentleman from Ontario [Mr. Lapham], a difficulty that is patent upon an examination of the first section of the report of the majority of the committee, and a difficulty which I think cannot but strike the mind of every gentleman upon looking at the section itself. The first section, as reported by the majority of the committee, commences in this wise, "The chief executive power in cities shall be vested in a mayor." Now, certainly this language covers the entire territory included within the bounds of a city, and it speaks of an executive power which may be energized within that territory, and it provides that the chief power which may be energized within that territory shall be vested in a mayor. The section as reported by the gentleman from Kings [Mr. Murphy], avoids that difficulty, and it is drawn as I think any one would draw it, if he did not mean to have the difficulty which is patent upon the face of the section, as reported by the majority of the committee, corrected. It is in these words: "There shall be chosen every two years by the electors at large of every city a mayor who shall be the chief executive officer thereof." No difficulty is created by that. Precisely what the mayor is designed for is prescribed and defined, and the mayor is not made superior to the Executive of the State, is not made superior to every other power, but is made precisely what any gentleman, if he undertook to draw an article of this kind, as it seems to me, would desire to make him, the chief executive officer merely in the city, and not superior within that territory to every other power. Now, to be satisfied that the suggestion of the gentleman from Ontario [Mr. Lapham]—for it is not mine—is not a fanciful one, let us look at the matter. "The chief executive power in cities shall be vested in a mayor." An exigency arises in which the Governor of the State brings, with the power of the entire four millions of the people of this State, comes to the city and claims to exercise his superior authority over that of the mayor. The mayor of the city meets him with the very Constitution under which they both hold their places, and which says that it shall be the duty of the Governor to see that the laws are executed throughout the whole State. "But," says the mayor, "when you come to this city, when you come within my limits, when you come within my jurisdiction, the Constitution of the State of New York makes me the chief executive officer of this city, and I am the chief executive officer here." For myself, I avow that my sentiments have not changed. I would not legislate upon this subject in the Constitution of the State; but if it be desired to prescribe in the Constitution how these things shall be, as I am very much inclined to believe that the Convention intends to do, it seems to me that the first section of the report of the gentleman from Kings [Mr. Murphy] is unobjectionable in many of its aspects. In this respect I believe that the minority report made by Mr. Opdyke and the other gentlemen that concurred with him in that report, is equally unobjectionable. It does not give the chief executive power in the city to the mayor but it makes the mayor the chief executive officer in the city, and in that respect I consider it equally unobjectionable with that of Mr. Murphy.

Mr. LAPHAM—I would call the attention of the gentleman from Rensselaer to the first clause of the first section of the minority report [Document 138], in which I think the same objectionable language is contained.

Mr. M. I. TOWNSEND—The word "chief" is not used in that report, and it is the use of that word that makes the difficulty in the majority report. The objection is not that the mayor should have executive power in his city. The objection to the majority report is that it would make him the chief, paramount and above every other power. Although I prefer the language of the report made by the gentleman from Kings [Mr. Murphy] to the minority report submitted by the gentleman from New York [Mr. Opdyke]; still the latter is not open to the objection that it makes the mayor of the city within the city superior to every other power in the State.

Mr. OPDYKE—At the request of some friends who favor the more material portions of the article reported by my associates and myself, and inasmuch as I see no objection to the first section reported by the gentleman from Kings [Mr. Murphy], I beg leave to withdraw for the present the substitute that I have offered.

The substitute of Mr. Opdyke having been withdrawn, the question recurred on the substitute of Mr. Curtis.

Mr HARRIS—I think the remarks of the gentleman from Rensselaer require a moment's consideration. He takes the position taken by the gentleman from Ontario [Mr. Lapham] last night, making the objection that the provisions of the first section of the majority report would create a conflict of jurisdiction. I am a little surprised

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that a good lawyer should argue that any such result would follow. The Constitution of the United States declares that the executive power shall be vested in the President of the United States. The Constitution of this State declares that the executive power shall be vested in the Governor. Now, sir, no one has ever supposed that there was any conflict of authority or jurisdiction in consequence of the same phraseology being used in the two Constitutions. They are to be construed *in pari materia*. They are to be construed in reference to their subject-matter. The Constitution is to be construed in this respect in reference to the general powers conferred upon the President. The meaning of the provision is, as every lawyer knows, that the executive power in relation to the laws of the United States, shall be vested in the President of the United States. The meaning of the provision in the Constitution of the State of New York is, that the executive power in relation to the laws of the State of New York, shall be vested in the Governor. In this section of this article under consideration it is provided that the executive power in cities shall be vested in the mayor. That same provision is in the charter of New York and no one has encountered or apprehended any difficulty from it. "The executive power in the corporation of New York shall be vested in the mayor and the executive department," is the language of the present charter of the city of New York. Now, sir, the object in putting the word "chief" in this section, was to avoid the phrase "executive department," and to make the mayor the head of the executive power in New York; but if any gentleman thinks that any difficulty will arise from the use of the word "chief" I shall not be tenacious in retaining it. I do not think it amounts to any thing. I do not think it is of any very great consequence whether it be retained or not. If we were to say that the executive power in the city of New York, or in cities, should be vested in the mayor I should be quite satisfied. This provision is substantially the one that has always existed in the charter of the city of New York, and what I apprehend will be found in all charters; and it has no more effect in the Constitution than in a constitutional law. I apprehend, therefore, that there can be no difficulty about it. While I am on the floor I desire to say that I hope that those gentlemen in the Convention who are not disposed to give this subject the go-by, who are desirous of making an article that shall be acceptable to the people and that shall avoid the great evils to which reference has so often been made in this discussion, will reject these amendments proposed by gentlemen who are unfriendly to the article, and that they will unite together and perfect an article that shall be acceptable. I apprehend that that is the only way that we shall accomplish any thing. The proposition now to be voted on is one that is calculated to divide the friends of the article, and I hope that they will be willing to vote it down, and then that they will go on and perfect the sections one after another as they shall come up for consideration.

The PRESIDENT—The question is on the substitute offered by the gentleman from Richmond [Mr. Curtis]. The Secretary will read the section.

The SECRETARY read the section as follows:

"SEC. —. There shall be chosen every two years by the electors at large of every city, a mayor, who shall be the chief executive officer thereof, and whose duty it shall also be to see that the duties of the various city officers are faithfully performed. He shall have power to investigate their acts, to have access to all books and documents in their respective offices, and to examine their subordinates on oath. He shall also have power to suspend or remove such officers from office, whether they be elected or appointed, for violation or neglect of duty, to be specified in the order of suspension or removal; but no such removal shall be made without reasonable notice to the party complained of, and an opportunity afforded him to be heard in his defense."

The question was put on the substitute of Mr. Curtis, and, on a division, it was declared adopted, ayes 60, noes 24.

The SECRETARY read the second section, as follows:

SEC. 2. Any mayor may be removed by the Governor, but only after due notice and an opportunity of being heard in defense, and for causes to be assigned in the order of removal. In case the office of any mayor shall become vacant before the expiration of the term for which he was elected, the powers and duties of the office shall devolve upon the presiding officer of the board of aldermen until the vacancy shall be filled.

Mr. CURTIS—If there are no amendments to be proposed to this section, I shall offer a substitute for it.

The PRESIDENT—There being no amendments offered, the substitute of the gentleman from Richmond will be received.

Mr. CURTIS—I will read it for the information of the Convention. It is the second section slightly changed of the article reported by Mr. Murphy.

SEC. —. There shall be chosen every three years by the electors at large of every city, a comptroller, who shall have charge of the departments of finance. There shall be such other city officers as the Legislature shall provide; but for this purpose cities may be classified according to population and different officers provided for the different classes. All city officers for whose election or appointment no provision is made by existing laws or in this article, shall be elected by the voters of the city at large or of some division thereof, or appointed by the mayor, with the consent of the board of aldermen, as shall be provided by law. No city officer shall, during his term of office, hold a seat in the common council of the city, or in the Legislature of the State, and the acceptance of such a seat shall vacate his office.

Mr. VERPLANCK—I suggest that we pass over the sections until we arrive at the tenth, which covers the matter we have for several days discussed, for the purpose of taking a vote on that. All the other sections depend very much upon what we shall do with the tenth section. If that is adopted or rejected, we know precisely

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what to do with the other sections. I therefore move to proceed and consider the tenth section, passing by the others for the present.

The PRESIDENT—The motion is not strictly in order at this time, when there is an amendment pending, but if there is no objection it will be entertained.

Mr. HITCHCOCK—I object.

The PRESIDENT—Objection is made, and the motion cannot be entertained at this time.

Mr. COMSTOCK—I offer an amendment to the substitute which will reach the object which the gentleman has in view. I move to insert in the twelfth line of the substitute, after the word "law," the words "no civil division of the State other than counties, towns, cities and villages shall be created." That amendment being accepted I will support this substitute.

Mr. CURTIS—My intention was, when we should reach that point in the article to offer a substitute that would cover the whole ground.

Mr. RUMSEY—I desire to inquire whether if this substitute be adopted, it can be amended afterward?

The PRESIDENT—It can.

Mr. COMSTOCK—I had occasion once to express my views upon the principle involved in that amendment. I showed, as I thought, to the Convention, that this entire system of commissions depended upon a legislative creation of new political and civil divisions in the State. The Constitution of 1846, as we all know, prohibits in the most exact anguage, the appointment of county, town and city officers by any other authority than the electors of those localities. They must either be elected or appointed by the local authorities. That is precisely the Constitution under which we now live. These commissions, about which so much has been said, have been created under a legislative device creating political or civil divisions other than those I have named. Without that legislative creation of new divisions, the officers who now fill these various commissions, would be city officers, their functions being identical with those which had been previously discharged by the officers of the cities. The court of appeals held that a new name did not create a new office; and, therefore, that the whole question of the validity of the laws creating these commissions depended, upon the creation of new political divisions of the State. My amendment is intended to reach that precise question, and upon that amendment I call for the ayes and noes.

Mr. GOULD—I would like to ask the gentleman from Onondaga a question; whether school-districts are not civil divisions of the State?

Mr. COMSTOCK—No, sir; they are not. They have nothing to do with the government of the State. They are merely educational divisions.

Mr. CURTIS—I wish to say that in due order I shall offer a substitute which will cover the ground sought now to be covered by the gentleman from Onondaga, [Mr. Comstock] whose amendment, therefore, I trust will be voted down. The substitute which I shall offer, will come in more properly, as it seems to me, as a distinct section.

Mr. McDONALD—I would like to ask the gentleman from Richmond [Mr. Curtis] a question; whether the substitute would not constitutionalize all the commissions now existing?

Mr. CURTIS—The substitute which I shall offer?

Mr. McDONALD—I understand the gentleman from Richmond [Mr. Curtis] to accept this substitute which says, "all officers provided by law."

Mr. CURTIS—This refers only to city officers.

Mr. DUGANNE—I wish to ask the gentleman from Onondaga whether his amendment would not destroy the present judicial and senatorial districts of the State?

Mr. COMSTOCK—Not at all, sir.

Mr. DUGANNE—Why not?

Mr. COMSTOCK—That is all provided for in the Constitution.

Mr. MURPHY—I came in as this motion was about to be put, and I do not understand what is the motion before the house, except as to the amendment of the gentleman from Onondaga [Mr. Comstock]. The original proposition I do not understand.

Mr. COMSTOCK—I will slightly change the phraseology of my amendment, so that it will read: "No political or civil division other than those mentioned in this Constitution shall be created."

Mr. E. BROOKS—I suppose that upon the issue of this amendment depends the disposition to be made of the report of the majority of the committee, and the report of the minority in charge of Mr. Opdyke, one of the members of the Committee on Cities. I trust the amendment of the gentleman from Onondaga [Mr. Comstock] will be approved. Unless it is adopted, it seems to me, we are to return to the same order of things which has led to so much discussion in this Convention and so much discussion in the Legislature and in the State at large. I have not availed myself of the opportunity to reply to the many remarks which have been made by gentlemen during this discussion in reference to the question of commissions, and to my agency in originating one of them; but having been assailed, directly or indirectly, by every gentleman except one who has taken part in discussing the majority report of this committee, and for my direct agency in the creation of the police commission for the city of New York—having been alluded to over and over again, in reference to the part I took in the Senate of the State some ten years since, I deem it but justice to myself, justice to the democratic members of that Legislature and to this Convention, to state precisely what were the facts. I shall not reiterate what I said last week, which was literally true, as to the origin of the police bill, nor to the great feeling in the city of New York in reference to its passage, nor to the general demand on the part of the people in that city for a change in the police department. But, sir, at that time I was not a member of the democratic party. I owed nothing to it, for nearly every member of it, I believe, voted against me, and it owed nothing to me, and on that score we were precisely equal. As little did I owe to the members of the republican party, for they unanimously, I believe, were

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in opposition to me then as those with whom I acted were in opposition to them. But it so happened that I was chairman of the Committee on Cities in the Senate of the State, and that this law having passed the Assembly by a large majority (not one member of the democratic party, however, voted for it there) came to the Senate and was placed in my hands. In the Senate it went through the ordinary forms of legislation, not, however, receiving the discussion which was due to a measure of such importance, for it was not introduced until the fourth of April, 1857, and it was passed on the fifteenth of the same month. It received some twenty-seven affirmative votes, and there were but five votes against it. The five gentlemen who voted against it were, with a single exception, members of the democratic party, including Mr. Sickles, at that time a prominent member of the democratic party, Mr. Spencer of New York, Mr. Kelly of Columbia, and two others. I desire to say in justice to those who constitute the minority in this Convention, and with whom I am now acting, that neither in the Assembly nor in the Senate did a single member of the democratic party give his vote for the police bill of 1857. There was a remonstance against it from the Brooklyn common council and from the common council of New York city. But let me also add, Mr. President, in justice to myself, and in justice to the police bill of 1857 and to the act of 1867, that the one bears no more resemblance to the other than light and darkness bear to each other. The police bill which I introduced and defended in the Senate of the State made provision that the mayor of the city of New York, a democrat, and the mayor of the city of Brooklyn, a democrat, should be members *ex officio* of the police board, and should have all the powers of those who were appointed by the Governor; and in regard to the other members of the commission, let me say that before I gave my support, sanction or vote to that measure, that I had an assurance from the friends of the Governor of the State that the members of the commission should be selected irrespective and independent of political considerations. I went to the Governor myself, and implored him that of the commissioners to be appointed, and first named in the bill, one should be selected from each of the then prevailing parties in the State of New York—one from the American party, one from the democratic party, and one from the republican party—

Mr. HUTCHINS—Mr. President—

The PRESIDENT—Does the gentleman from Richmond [Mr. E Brooks] yield to the gentleman from New York [Mr. Hutchins]?

Mr. E. BROOKS—I do, sir.

Mr. HUTCHINS—I desire to ask the gentleman from Richmond how, if that was the case, it happened that the commission consisted of five members besides the mayor?

Mr. E. BROOKS—I had the assurance of the friends of the Governor that the commissioners should be apportioned among the three prominent parties in the State. When the bill was introduced the number of commissioners provided for was three. When it was passed it was five. I am not incorrect, I think, either in my facts or my conclusions; and if the gentleman from New York had given me the opportunity to state without interruption, all the facts, I should have stated this also.

Mr. HUTCHINS—I will say to the gentleman from Richmond, as my justification for interrupting him, that he stated that after the bill had passed he went to the Governor and implored him to appoint one of the commissioners from each of those three parties.

Mr. E. BROOKS—The gentleman is very eager to catch mistakes and make interruptions, but if he had listened to my remarks he would have heard a full statement of the whole matter.

Mr. HUTCHINS—I beg the gentleman's pardon.

Mr. E. BROOKS—Let me say, Mr. President, in addition, and as having an important bearing upon this subject, that the details of the police bill of 1857 and those of the existing police act, are entirely unlike. The supervisors of the county of Kings and the supervisors of the county of New York had the selection of the patrolmen under the police bill of 1857. Every man to be appointed was to be selected by the local authorities, the supervisors, under a special amendment inserted at the time in the act itself. The supervisors of the county of Kings and of the county of New York had the selection of the men and the regulation of their pay; and as every gentleman knows, that provision was entirely unlike the present system. The appointment of these officers was a local matter, a local power, a local patronage, if you please, entirely independent of State authority except so far as the State, the Governor by and with the advice and consent of the Senate had the naming of the five commissioners who formed the majority of the commission. Sir, I trust that after this explanation gentlemen will see and recognize a wide difference between the police commission under the act of 1857, and the police commission under the present law. Now, sir, in regard to commissions generally, I also desire to say that I have no objection to a commission as a commission. I hold that there may be commissions appointed by the State which may properly exercise authority in certain localities; but when commissions of this kind are named by the State, they should be for some specific purpose, and exercise their authority for some limited time. I also understand that the gentleman from New York [Mr. Hutchins] alluded to my agency in the matter of the harbor commission. Well, sir, I did take a prominent part in the passage of that act. It was a commission made up partly by the federal government, and partly by the State government, and it was created for federal and State purposes. It was a commercial commission purely, and its object was to prevent encroachment upon the harbor of New York by the extension of piers in the North and East rivers, and to prevent obstructions in the lower portions of the harbor. It was eminently a proper subject for the State and for the United States government to consider, and when that commission had closed its labors it surrendered its powers to the source from which they were originally obtained, and there was an end of it. All such commis-

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sions, commercial in their character, are proper. In regard to other commissions, if they have to do with a subject in which the State is mainly interested, and in which the locality has not the prior interest and right, why, then the State may manifest its interest by creating such a commission. Limited commissions for limited services, and for limited times, are eminently wise; but not a commission to administer local government for all time, the expense of which is imposed upon the people, as in the case of this police commission for the city of New York. I shall not occupy much more of the time of this Convention, but I wish to say a few words in vindication of myself in regard to one or two other matters which have come up in this debate. Let me say first that I am opposed to the report of my friend Mr. Opdyke, and that I am opposed to the report of my friend from Kings [Mr. Murphy], unless the amendment of the gentleman from Onondaga [Mr. Comstock] shall be adopted, and then, in justice to the majority of the committee to which I belong and to which the gentlemen also belong, I must say that I prefer the majority report to either the report of the gentleman from Kings, or the report of the gentleman from New York My main objection to the report of the gentleman from Kings [Mr. Murphy] is that, unless amended as proposed by the gentleman from Onondaga, it gives the Legislature nearly all the power which it now possesses, and that under this section, commissions may be created hereafter as they have been created in the past.

Mr. MURPHY—Will the gentleman yield a moment?

Mr. E. BROOKS—Certainly.

Mr. MURPHY—It is due to myself Mr. President, that I should remark here that the gentleman from Richmond [Mr. E. Brooks] has entirely misinterpreted my report. Certainly he could not have read it with his usual attention, or he would not have made the remark that he has just expressed, that the effect of it would be to continue commissions. My report expressly states that in the main I agree with the majority of the committee and that I differ from them merely in the points stated. But as the points stated have no reference to commissions it cannot be, therefore, that I differ from the majority on that subject.

Mr. E. BROOKS—I am not dealing with the report of the gentleman from Kings. I am dealing with the article reported by him, and here let me read it to see whether or not I am just in my construction of its meaning.

Mr. MURPHY—The gentleman must read my report in connection with the article, or he will not understand the article, for except as to two sections, I agree with the majority report in all other respects.

Mr. E. BROOKS—Well, if I am mistaken, I am very happy to be corrected, and to make my apology to the gentleman. I only say now, that this second section which is under consideration, is capable, without the amendment of the gentleman from Onondaga [Mr. Comstock], of being so construed as to allow the Legislature to create commissions. If the section were left without amendment there can be no doubt that under it the Legislature would have power to create such commissions as they might think proper. It says, for example, "There shall be such other officers in cities as the Legislature shall provide;" and again it says, 'all officers—"

Mr. CURTIS—Will my colleague give way for a moment?

Mr. E. BROOKS—I will, sir.

Mr. CURTIS—The substitute reads, "all city officers."

Mr. E. BROOKS—Well, sir, I am dealing with the original amended article itself, in justification of the remark that I made, and my impression was that the gentleman from Kings [Mr. Murphy] meant to make an independent article in the two sections; but, as I have said, I am very glad to be corrected, if I am mistaken. Let me come, now, to the report of the gentleman from New York [Mr. Opdyde] who is an ex-mayor of that city, who has taken a deep interest in this subject, and who has two members of the committee associated with him in the recommendation of his report. My objections to his report, and which I understand he will press by and by upon the Convention, are, I may say, sevenfold; and I will state them very briefly. In the first place, his report gives the power to the Governor to remove the mayor, and gives it in a way unlike the practice which has been common in the State, and in a way to which I have most serious objections. His report also ignores the wards of the city. It gives no ward representation. The gentleman from New York knows that there are a large number of wards in New York; but he chooses to disown their existence, as the Legislature has since the adoption of the existing charter. Now, if these wards are to exist, they ought to be recognized as wards, and not as districts like the councilmanic districts at present existing in the city, and which make confusion worse confounded in the selection and election of candidates, by making division lines over and through streets without recognizing the existence of the ward boundaries. His article gives the local legislature power, but makes a division of the power which does not locally recognize the people themselves. For example, he recognizes the power of the people to elect eleven aldermen to constitute the upper branch of the local legislature, but the members of the other branch are to be selected from a class of tax payers, every one of whom must own property equal in value to one thousand dollars. Again, Mr. President, this report insists that the comptroller of the city, the money power of the city, shall be elected by the tax payers, as the upper branch of the local legislature is to be elected. Sir, I am against all such distinctions. I do not recognize in a government like ours any distinction between one class of citizens and another class of citizens—any distinction on the score of citizenship between wealth and poverty. It is misfortune enough for a man to be poor, without having the ban of a Constitutional Convention and of a State Legislature put upon his poverty. I maintain, Mr. President, that this distinction between tax payers who have property and those who unfortunately have no property upon which the State can rest its eyes or lay its hands, is a theory wholly uncongenial

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to our government; and I maintain also that no such distinction can properly exist under a government like ours. Here is a poor man who lives in one of the tenement houses in the city of New York, and there are between eighteen and nineteen thousand of such houses in that city. The rich landlord, powerful in money and influence, will sub-let his tenement houses in a way to secure twenty or thirty per cent on the capital, and in a way which the second party can make ten or fifteen per cent as his agent; and then the poor tenant, who is huddled with his family in one of the rooms of these houses, is taxed to pay this thirty, forty, or more per cent. Do you tell me, sir, that this tenant is not a tax payer? Is he not as much a tax payer, according to his means, as the gentleman who owns the house itself, and who secures this high percentage upon the capital which he has invested in it? It is the avarice of the landlord that leads him to do this, and you are putting a premium upon his avarice by giving such a man the right to vote for a comptroller and for a board of aldermen when you deny the same right to the poor man who is his tenant. Sir, I maintain that every man who consumes food, wears clothes, who breathes the air of heaven, who occupies a tenement, who walks the streets seeking his daily labor, is in every way a citizen, discharging the duties of a citizen, and is, in every proper sense of the word, a tax payer. I think every fair man must see this. I now leave this branch of the subject and proceed to two or three other points which I wish to make before I resume my seat. And first, as connected with the subject which I have just been considering, I put it to the candor of this Convention, and of the gentlemen representing the rural districts of this State, to say if there can be any just distinction or discrimination between a man living on the island of Manhattan or in the city of Brooklyn, and a man living in the rural districts. In the rural parts of the State you vote for your sheriffs, for your local judges, for your justices of the peace, for your boards of supervisors for your county judge, for every officer whose duties belong to local affairs, and yet when it comes to the city of New York, you talk about society, and about expediency, and about the difference between a man living in one locality and a man living in another. I deny the justice of such distinctions, and I say that when you recognize the fact that there are about 1,800,000 men living in the cities of this State, which has, altogether, only about 4,000,000 of people, you cannot afford to put the ban of degradation upon this large class of your fellow men. They are your equals under the law, and your equals in the eye of the God of mercy and of justice; and, if equals, they are entitled to all the privileges and immunities which you are entitled to, wholly irrespective of the geographical locality in which they reside. And when it comes to the matter of choosing local officers to administer local affairs, they have their rights in their localities just as much as you have yours, and if you are fair and just men you will recognize this equality of right between yourselves and them. Now, sir, a word in regard to the assaults upon the city of New York which we have heard from time to time in this Convention for months past. We have heard a good deal about the foreign population, and that the people of that great city are not to be trusted because they are made up largely of men who are ignorant and vicious. Sir, it has been admitted by gentlemen of candor in this Convention that there is as much vice in the country in proportion to population as there is in the cities of the State. Vice is often more easily concealed in the country than it is in the city, and as I have had occasion to say when speaking of the institutions of the city of New York, there are a great many inmates of those institutions whose homes are in the country. People come from the country, fill our public institutions, fill our hospitals, fill those four hundred houses of abortion which Boston says exist among us, and which make up one of the disgraceful elements of life in the city of New York. I had occasion to say before, sir, in regard to the foundling hospital that the majority of the inmates of that institution are from the rural districts, and we know the counties they come from and the circumstances under which they came. Sir, are we in the city of New York to suffer because we are so located that people can go there and relieve themselves of the consequences of their vice? What said the gentleman from Broome [Mr. Hand] the other night? He said that even our city charities, our munificent provision for the relief of the poor and the destitute, was an incident and a proof of the immorality of the city, and an argument in favor of its government by the State. Sir, let me give the gentleman what might be called an *argumentum ad hominem*. There is in the county of Broome an institution known as the inebriate asylum, and the city of New York paid from its excise fund last year $128,000 for the support of that asylum in the city of Binghamton. Because there are so many inebriates in that asylum shall I therefore say that that is an incident of the immorality of that locality? Sir, the argument is just as good in the one case as it is in the other, and it is not worth a rush in either case; but it nevertheless tells the whole truth in reference to a fact like this. Those institutions of charity are in the city of New York because there are a million of people there, and because nearly 250,000 emigrants arrive there every year. And, sir, the worst of these emigrants do not remain, as was said by my colleague from Richmond [Mr. Curtis] the other day, because, if the reports before us are true, a million of dollars has been expended within a few years past in the rural districts for the support of this very class of poor emigrants who have made their homes in the interior towns and counties of the State. My colleague said the other day that New York was the *bete* of the State. He did not say the *bete noir*, he did not add the latter word, I suppose, because of his respect for the color named, for I believe that the word *noir* means black.

Mr. CURTIS—If my colleague will allow me I will say that he misunderstood me. I said *gate*, not *bete*. [Laughter.]

Mr. E. BROOKS—Then I beg the gentleman's pardon. I understood him to say that the city of New York was the *bete* of the State, and it was so much in harmony with his general

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reflections upon the character of the city of New York that it never occurred to me that I could be mistaken. I wondered, however, why he did not add the other word. But my other friend from Columbia [Mr. Gould] was pleased to speak of the city of New York as "the common sewer of the State." Why, sir, that was a most unjust reflection to come from him. He was pleased to say also, in regard to the large number of charities in that municipality, that they were the result of appropriations not mainly from the city of New York, but from the State of New Jersey, the State of Connecticut and elsewhere. Sir, it seems to be the pleasure, the delight, the joy of gentlemen of a certain class, in this Convention, to say all the evil things they can of the greatest municipality of the State and of the new world. New York is the pride of the nation and it ought to be the pride of the State; and yet in this State Constitutional Convention there seems to be, as I have said, a sincere joy on the part of some gentlemen in saying all manner of evil things against it, and to hold it up to the world in a way to disgrace it. Sir, I deny the gentleman's proposition. I maintain upon the record that the bulk of the charities of the city of New York are contributions in, of and from that city. I point, for example, to that splendid edifice built by Peter Cooper. Is he not a citizen of New York, locally and in every other respect? I point to the vast amount of money which Chauncey Rose appropriated for a local charity in that city. I point to the New York Astor Library, built and established in a contribution by father and son, amounting to half a million dollars. I point to the New York hospital, for which, in one single year, two hundred and fifty thousand dollars have been appropriated by the people of that city. I point to the Leake and Watt asylum. I point to the New York Historical society, built up entirely by appropriations of the people of that city; and, sir, I might go through all these various charities, and name millions of money which have been appropriated for objects of literature and art, and for objects of charity within a very few years, including, I believe, some seven hundred and fifty thousand dollars, if not a million dollars, appropriated for the Women's Hospital, by Mr. Roosevelt, which will soon be erected. And, sir, I will go further and say, that, for the suffering poor of the South, irrespective of color, some hundred thousand dollars was appropriated during the last year, and since then thousands more for the sick and diseased at the South. I will say in regard to the war, which has been alluded to over and over again during this discussion, that New York city, in that war, through its banks and its citizens, contributed more men and more money in proportion than any other people in any part of the United States. And, sir, I may say in regard to the sanitary commission that the sum of two millions of dollars was appropriated there for the relief of the suffering soldiers in the hospitals of the country, who were prostrated and made helpless by scars, and by disease and wounds upon the fields of battle at the South. Sir, I admit there are dark pictures of the city of New York, but there are bright ones also, and while so many gentlemen around me seem to take sincere pleasure in involving the city in a cloud by which it would seem to be sunk as in Egyptian or Cimmerian darkness, I take pleasure, but most imperfectly, in the hurry of the moment, in relieving the city from the dark cloud which they have placed upon it. I desire to say one word only in regard to what was stated by my friend on my right [Mr. Stratton] and by other gentlemen in reference to the riots of 1863 and the riots of 1861. My friend was pleasod to say that he was one of the number who accidentally presented himself in front of the office of the New York *Express*, when a large crowd was there—a mob, I call it—a vicious, thieving mob, who presented themselves there in the holy name of loyalty and patriotism, demanding that the flag of the United States should be raised over that office. Sir, I respect the flag of my country as much as my friend [Mr. Stratton]. My own father gave his life in its defense There is not a star or a stripe upon it which I do not honor and love and respect, and I defy any man, anywhere, at any time, under any circumstances, to show that I have done aught to dishonor that flag or that I do not esteem it as highly as those who profess to honor it much more. But there are places where I do not like to see the American flag placed. I would never have it placed over a church, holy as the church of God may be, nor have it prostituted by being placed over a grog-shop or any other place of dishonor. Nothing of this kind can ever be charged upon me. When, in the early history of the rebellion in the city of Memphis, there were men misguided and wicked enough to dishonor the flag, and also in the State of South Carolina, to dig a grave for the American flag, and literally to bury it under their feet, I held that all these people degraded their manhood, and I held them also in contempt, as I always shall any man who any where calls that flag "a flaunting lie," or does any thing to dishonor the flag of the nation. There are times and places appropriate to all things; and when my friend [Mr. Stratton] said that he clapped his hands in the presence of that multitude as the flag went up, in obedience to the mob—though as a fact, by the request of the police—I could not but think he might have been found in a great deal better company than upon that occasion; and I am sure he never was found in any so bad, either before or since that time. Sir, in regard to mobs, and this mob spirit I had occasion the other night to specify some of these mobs in different parts of the State and country. Mr. President, I did not say all that I might have said. I did not allude to the mob in my own county of Richmond, when it was truly said that the State property was fired at night and the inmates of the hospital were turned out to lie upon the cold earth at night. Sir, when my colleague [Mr. Curtis] was pleased, albeit, upon my call, to say that the journal with which I was connected was one of those which had been instrumental in maintaining, or encouraging, or doing any thing to support the mob spirit or mob men, the words upon my lips were those of Saint Paul to Timothy: "Alexander, the copper-

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smith, has done me much evil. May the Lord reward him according to his works." I will not retaliate upon my friend from Richmond by asking whether or not he took a conspicuous part in those memorable riots on Staten Island. I know, as an opponent of that riot, that from one end of the south shore to the other, I was burned in effigy, because by my voice and in the press with which I was connected, I opposed it with all the vehemence and earnestness of which I was capable. No, Mr. President, I have never encouraged mobs. I abhor them. I would deal with them, after due warning, as summarily as powder and ball could deal with them. I detest a mob in every part and parcel and arrangement of it. Having said these few words in justification of myself, I leave the subject.

Mr. ARCHER—I move the previous question.

SEVERAL DELEGATES—No, no.

Mr. DEVELIN—I desire the ayes and noes on the vote.

Mr. ARCHER—At the request of the gentleman from Richmond, I withdraw the motion for the previous question.

Mr. CURTIS—I wish to say to the Convention that in case the pending amendment of the gentleman from Onondaga [Mr. Comstock], which seems to me to be out of place in this section, shall be voted down, I shall then propose as a substitute the tenth section of the minority report submitted by the gentleman from New York [Mr. Opdyke], which I will read:

"SEC. 10. The State, for the purposes of local government, shall be divided into towns, counties, cities and villages, as heretofore, and no other local divisions or districts shall be made except for sanitary and police purposes. The right to provide for the preservation of the public health and to appoint and control the police force of the State shall remain with the State Legislature; and in the exercise of these rights the Legislature may adopt whatever territorial divisions or local districts it may deem most conducive to the public good."

It will be perceived that the amendment of the gentleman from Onondaga can then be offered, prohibiting any further divisions, and then the question would be squarely raised in its proper place. I hope, therefore, that the amendment of the gentleman will be voted down here as out of its place.

Mr. MURPHY—I suppose we have passed the domain of discussion of the general question. I shall not, therefore, follow my friend from Richmond [Mr. E. Brooks] in the manner of this discussion, but I cannot permit what he has said in regard to the report which I have submitted to pass without correction. The gentleman is in error in regard to the scope of that report in supposing that I differed from the views of the majority on the subject of local government. I beg to call his attention to its language, which he has overlooked. My report commences as follows:

"The undersigned, concurring with a majority of the committee in most of their recommendations, dissents from those which confer upon the mayors the sole power of appointing all the officers of cities, including the members of boards of administration, commonly called commissions, except the comptroller and one or two other officers."

Now, sir, there is a distinct declaration on my part that I concur with the majority of the committee except so far as they propose to confer the sole power upon the mayor of appointing city officers, and with another exception, and that is in regard to the time of holding municipal elections. I am not in favor of commissions filled by appointments at Albany, nor have I ever omitted to express my views in opposition to them; and a proper construction of my report shows that I favor the report of the majority in this respect.

Mr. DALY—Will the gentleman allow me to ask him a question? Would it not be possible, under the section he has reported, as it is proposed to be amended, to have commissions, provided they were limited to the city of New York or any other city so as to come under the denomination of city officers?

Mr. MURPHY—I was about to make a remark which will answer the inquiry of my friend from New York [Mr. Daly]. The amendment proposed by the gentleman from Onondaga [Mr. Comstock] is simply that there should be no new division of the State other than those already recognized in the Constitution; namely, counties, cities, towns and villages. Now, as I understand it, that section has no reference to all commissions, but only to a certain class of commissions; namely such as may be appointed for districts. It has no reference whatever, to those commissions which are appointed for cities only. Nor is there any provision that I am aware of in the report of the majority of the committee on that point; and for aught that appears in the report of the majority or in the amendment proposed by the gentleman from Onondaga [Mr. Comstock] commissioners may be appointed for the city of New York as heretofore, like the commissioners of Central Park. I dissent too from the idea of the gentleman from Richmond [Mr. E. Brooks], that this amendment of the gentleman from Onondaga [Mr. Comstock] will effect the repeal of all commissions. That amendment is prospective. It simply provides that hereafter, no districts other than acknowledged districts in this State shall be created, leaving in existence those that have already been created. In other words, it leaves the police and health commission as they now exist in full force. I shall, however, support the amendment of the gentleman from Onondaga. It is good as far as it goes; but something more will be necessary in the direction I have mentioned—I mean in regard to the existing districts.

Mr. FOLGER—Is an amendment now in order?

The PRESIDENT—It is not.

Mr. AXTELL—I move the previous question.

The question was put on the motion of Mr. Axtell for the previous question, and, on a division, it was declared carried, by avote of 58 ayes to 24 noes.

The SECRETARY then proceeded to call the roll on the amendment offered by Mr. Comstock.

The name of Mr. Conger was called.

Mr. CONGER—I desire to be excused from voting, having paired with the gentleman from St. Lawrence [Mr. Merritt].

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The PRESIDENT—The arrangement will be recognized.

The name of Mr. Smith was called.

Mr. SMITH—I desire to be excused, having paired with Mr. Alvord, who is absent.

The PRESIDENT—The gentleman will be excused.

The name of Mr. E. Brooks was called.

Mr. E. BROOKS—I ask to be excused, having paired with Mr. C. E. Parker on this question.

The PRESIDENT—The arrangement will be recognized.

The SECRETARY concluded the calling of the roll and the amendment of Mr. Comstock was declared lost by the following vote.

Ayes—Messrs. Baker, Barto, Bergen, Cassidy, Chesebro, Colahan, Comstock, Cooke, Corning, Daly, Develin, Ferry, Garvin, Graves, Hadley, Hardenburgh, Harris, Hatch, Hiscock, Hitchman, Jarvis, Larremore, A. R. Lawrence, M. H. Lawrence, Livingston, Loew, Masten, Mattice, Monell, Murphy, Potter, Robertson, Rogers, Rolfe, Schumaker, S. Townsend, Tucker, Veeder, Verplanck, Wales, Weed, Wickham, Young—43.

Noes—Messrs. A. F. Allen, C. L. Allen, Archer, Armstrong, Axtell, Beals, Beckwith, Bell, Bickford, E. P. Brooks, E. A. Brown, W. C. Brown, Case, Cheritree, Corbett, Curtis, Duganne, C. C. Dwight, Ely, Endress, Field, Folger, Fowler, Francis, Frank, Gould, Hale, Hammond, Hand, Hitchcock, Houston, Hutchins, Ketcham, Kinney, Krum, Landon, Lapham, A. Lawrence, Lee, Mc Donald, Miller, Opdyke, Pond, President, Prindle, Prosser, Rathbun, Reynolds, Root, Rumsey, Seaver, Silvester, Strattqn, M. I. Townsend, Van Campen, Wakeman, Williams—57.

Mr. OPDYKE—I move as a substitute for the third section which has just been read, the third section of the minority report submitted by me. It will be seen that to make that harmonize with the section that has just been adopted, it will be necessary to provide that the substitute which I offer shall be the second section, and that the second section which we have adopted, shall be the third in the article. Then they will be in perfect harmony and be consistent with each other. Now, Mr. President, I have stated in the written report and on the floor of this Convention all I deem it necessary to say in support of that section. I prefer to hear what objections may be urged against it, and then I will ask the privilege of making a response to these objections.

Mr. HARDENBURGH—I would ask for information whether the second section of the report of Mr. Murphy has been adopted as amended on the motion of the gentleman from Richmond [Mr. Curtis]?

The PRESIDENT—The substitute of the gentleman from Richmond [Mr. Curtis] was adopted in place of the second section.

The question was then put on the adoption of the substitute offered by Mr. Curtis, and it was declared adopted.

The SECRETARY proceeded to read the third section as follows:

SEC. 3. Except in the cities of New York and Brooklyn, the legislative power shall be vested in a board of aldermen; their number, the mode of their election, and their term of service shall be prescribed by law. In New York and Brooklyn, the legislative power shall be vested in a common council composed of a board of aldermen and a board of assistant aldermen. The board of aldermen shall consist of twelve members, to be chosen by the electors of the city at large. They shall be classified so that three aldermen shall go out of office each year, and after the expiration of their several terms under such classification, the term of office shall be four years. The board of assistant aldermen shall consist of one member from each ward, and shall be elected annually.

Mr. DEVELIN — According to the remarks which have been made by members of this Convention, we are all in a general sense democrats. The democracy that has been exhibited here, and I apply this remark especially to the gentleman from Richmond [Mr. Curtis] is that, the rights of the minority should be protected by taking away even the rights of the majority. Revolutions, Mr. President, never go backward. There was a time when property was needed as a representation for voting, but this has been changed, and I am utterly surprised that the distinguished gentleman from New York [Mr. Opdyke] should desire that property should be represented in the election of either aldermen, councilmen, mayor, or any other officer in the city of New York. So much obscurity has been thrown by the gentleman from Richmond, Mr. Curtis, upon my right, in reference to the riots of 1863, that it may be well to discuss the question of riots. I propose to say a word on that subject. I believe that Moses delivered the Israelites from Egypt by a riot or mob. [Laughter.] I believe that the revolutionary war was commenced by a mob in Boston, if I have read history aright. The tea would not have been thrown overboard from the vessel in Boston harbor had it not been by a mob or riot; and the county of Richmond would never have been delivered from what they considered a pestilence if the people had not been encouraged by the gentleman representing the county of Richmond on this floor—I do not mean you [Mr. E. Brooks], I mean the other gentleman. When that gentleman [Mr. Curtis] rose and showed his indignation at the riots of 1863, it was a grievous point for me to listen to him. I was, at the time of the burning of the quarantine hospitals on Staten Island in 1861, counsel of the commissioners of emigration, and when poor, sick foreigners with the small-pox and ship fever were taken from those burning hospitals and laid out upon the cold ground and died there without assistance—

Mr. CURTIS—Will the gentleman from New York [Mr. Develin] allow me to interrupt him for a moment? I wish to ask how many died.

Mr. DEVELIN—Two, to my knowledge.

Mr. CURTIS—Did they die from exposure?

Mr. DEVELIN—Yes, sir, from exposure on a wet night. As Richard Busteed would say, "are you answered?" [Laughter.] Two, to my knowledge, who were taken out of this hospital on that night, died.

Mr. RATHBUN—I rise to a point of order. If this discussion is to go on, it should go on in order, and be confined to the question before the

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Convention. I have listened to the debate, and have heard but little upon the pending question.

The PRESIDENT—The point of order is well taken. The gentleman will confine his remarks to the substitute offered. A wide latitude was indulged in in Committee of the Whole, and debate must be restricted to parliamentary limits.

Mr. DEVELIN—I would like to ask the President a question. If this body is an assemblage of rioters, what objection there can be to discussing a riot? [Laughter.]

The PRESIDENT—The gentleman must confine himself to the question.

Mr. DEVELIN—If, after giving an opportunity to all the members upon the other side to discuss this question, I am to be shut off, I have nothing more to say.

Mr. LOEW—I call for the ayes and noes on the pending substitute.

The SECRETARY proceeded to call the roll on the substitute of Mr. Opdyke.

The name of Mr. E. Brooks was called.

Mr. E. BROOKS—I suppose that I must regard myself as having paired on this question with the gentleman from Tioga [Mr. C. E. Parker].

The SECRETARY concluded the calling of the roll on the substitute offered by Mr. Opdyke, and it was declared lost by the following vote:

Ayes—Messrs. A. F. Allen, Armstrong, Beals, Beckwith, E. P. Brooks, W. C. Brown, Clarke, Ely, Gould, Hale, Hand, Ketcham, Lapham, Lee, Opdyke, Pond, President, Prindle, Prosser, Reynolds, Silvester, Stratton—22.

Noes—Messrs. C. L. Allen, Archer, Axtell, Baker, Barto, Bell, Bergen, Bickford, E. A. Brown, Case, Cassidy, Cheritree, Chesebro, Colahan, Comstock, Cooke, Corbett, Corning, Curtis, Daly, Develin, Duganne, C. C. Dwight, Endress, Ferry, Folger, Fowler, Francis, Frank, Garvin, Graves, Hadley, Hammond, Hardenburgh, Harris, Hatch, Hitchcock, Hitchman, Houston, Hutchins, Jarvis, Kinney, Krum, Landon, Larremore, A. Lawrence, A. R. Lawrence, M. H. Lawrence, Livingston, Loew, Masten, Mattice, McDonald, Miller, Monell, Murphy, A. J. Parker, Potter, Rathbun, Robertson, Rogers, Rolfe, Root, Rumsey, Schumaker, Seaver, M. I. Townsend, S. Townsend, Tucker, Van Campen, Veeder, Verplanck, Wakeman, Wales, Weed, Wickham, Williams, Young —78.

Mr. CURTIS—I offer now for the third section the tenth section of the article contained in the minority report of Mr. Opdyke.

The SECRETARY proceeded to read the amendment as follows:

SEC. 10. The State, for the purposes of local government, shall be divided into towns, counties cities and villages, as heretofore, and no other local divisions or districts shall be made except for sanitary and police purposes. The right to provide for the preservation of the public health and to appoint and control the police force of the State shall remain with the State Legislature; and in the exercise of these rights the Legislature may adopt whatever territorial divisions or local districts it may deem most conducive to the public good.

Mr. DALY—Mr. President, after the adoption of the substitute proposed by the gentleman from Richmond [Mr. Curtis] by which the existing commissions and the present mode of appointing the commissions is impliedly recognized by the provision declaring that all city officers for whose election or appointment no provision is made in this article or by existing laws—

Mr. C. C. DWIGHT—Will the gentleman permit me to ask him a question?

Mr. DALY—I would rather not. I will be very brief in my remarks.

Mr. C. C. DWIGHT—I was going to ask if police officers were city officers.

Mr. DALY—My answer to the gentleman will be included in what I rose to say. I say that, as a matter of construction, in which I possibly may be mistaken, but in which I agree with the gentleman from Richmond [Mr. E. Brooks] and disagree with the framer of the amendment to the section of the gentleman from Kings [Mr. Murphy], this section as amended does recognize all the existing commissions and the mode of appointment under them; and the modifications proposed in the amendment which the gentleman from Richmond [Mr. Curtis] has offered being the tenth section of the minority report of Mr. Opdyke, is simply a territorial limitation of the power, except where it is exercised for sanitary or police purposes. It does not touch the mode of appointment. Under the existing section, the commissioners, as officers under existing laws and is not provided for in the Constitution, in which indeed the heads of the police department, are included, are excepted from the operation of the mode of appointment provided for in the section and a different mode of appointment as respects them is distinctly recognized. I call the attention of the Convention to this fact, that, the effect of the pending motion of the gentleman from Richmond [Mr. Curtis] may be distinctly understood, and the extent to which the tenth section qualifies the section which has been adopted.

Mr. DEVELIN—When I was called to order, a few moments ago, I was talking on the subject of mobs. I suppose, as the question of police is now under discussion, I can proceed in my allusion to mobs in order. I desire to disabuse the minds of the members of this Convention of representations which have been made in regard to the mob of 1863. The gentleman from New York [Mr. Opdyke] was at that time mayor of the city of New York and I occupied at that time the position of corporation counsel. I think he and I understand the causes and the operations of that mob as well as any two men in this Convention. In the first place, the riot of 1863 was not created in the interest of the southern rebellion, or with any combination with southerners, or with any combination with General Lee or any body representing—

The PRESIDENT—The Chair must call the gentleman to order, and ask that he confine his remarks to the pending question.

Mr. DEVELIN—I am talking about the police. I was about to say that Mr. Kennedy—

The PRESIDENT—The gentleman is not in order. His remarks are not germane to the pending question.

Mr. DEVELIN—The police of the city of New York, Mr. President, according to the representa-

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tion of the gentleman from Richmond [Mr. Curtis], knew all about this riot.

The PRESIDENT—The gentleman is not in order.

Mr. DEVELIN—Is not the discussion of the question of police in order?

The PRESIDENT—The question of police, with reference to its action during the riots of 1863, is not germane to the question under discussion.

Mr. DEVELIN—The question, as I understand it, is, shall we give to the Legislature a territorial jurisdiction in respect to the organization of the police different from the divisions prescribed in the Constitution? As the gentleman from New York [Mr. Daly] has said, the amendment preserves the present commissions. Now I am not opposed to police commissions, nor do I think any democrat upon this floor is opposed to police commissions; but we are opposed to the mode in which police commissions are created and formed. As I took the opportunity of saying the other evening, when I was not called to order [laughter], Governor Seymour signed one of the bills organizing the commissioners of police. There were two democrats and two republicans in the commission, and, therefore, a large number of the voters in New York were satisfied it would not be a partisan commission; but the moment it became a partisan commission that moment it lost the confidence of the people of the city. Now, in the same way, if the democratic party should get into power, with Governor, Senate and Assembly, we might give some of you gentlemen in the rural districts a commission which you would not be very well pleased with. It is against the principle that we are fighting. I do not want it to be in the power of democrats or republicans to take away from localities the right to govern themselves. This is all that I believe there is in it. The gentleman from Kings [Mr. Murphy], the other day, stated the same fact. We are just as much in fear of a democratic commission as a republican, and what we desire is, that there shall be no partisanship whatever in these matters which affect such important interests in our cities. It is not to the word "commission" we object; but it is that where you have a large political majority, you impose upon the minority which are a majority in the city a commission that does not agree with it in political sentiment. That is all, I understand, that we object to.

Mr CURTIS—Will the gentleman —

Mr. DEVELIN—Is any body going to call me to order? [Laughter.]

Mr. CURTIS—Am I to understand from the gentleman from New York [Mr. Develin] that in the section I propose there is any provision made for a partisan commission?

Mr. DEVELIN—Yes, I do say so. It leaves it to the Legislature to make such territorial divisions as they please; and under that, they can give you just such a commission as they see fit. The gentleman from New York [Mr. Opdyke] with his usual frankness and straightforwardness will admit here, that when a leading democrat—a judge in New York—was called upon by him that democrat went and made a speech from the gentleman's house to prevent its being sacked and burned.—

The PRESIDENT—The gentleman from New York is out of order.

Mr. DEVELIN—Well, and another judge in the city of New York, who has been attacked in this Convention —

The PRESIDENT—The gentleman's attention has been called to the fact that in discussing the riots he is departing from the question.

Mr. M. I. TOWNSEND—I move the previous question on the substitute.

The question was put on the motion of Mr. M. I. Townsend, and it was declared carried.

Mr. LOEW—I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. COMSTOCK—I call for a division of the question, so that it may be taken upon the first clause and then upon the second clause of the proposed substitute.

Mr. M. I. TOWNSEND—I rise to a point of order. The substitute is offered as a whole and I submit it cannot be divided.

The PRESIDENT—The point of order is not well taken. It is in the province of any gentleman to call for the division of a question.

The PRESIDENT announced the question to be on the first part of the pending substitute, as follows:

SEC. 10. The State, for the purposes of local government, shall be divided into towns, counties, cities and villages, as heretofore, and no other local divisions or districts shall be made except for sanitary and police purposes.

The SECRETARY proceeded to call the roll on the first clause of the substitute offered by Mr. Curtis.

The name of Mr. Duganne was called.

Mr. DUGANNE—I ask to be excused from voting.

The PRESIDENT—The gentleman will please state his reasons.

Mr. DUGANNE—My reasons are, sir, that I do not believe the section to be of any utility, because I believe the State has all the power at the present time.

The question was put on excusing Mr. Duganne, and it was declared lost.

Mr. DUGANNE—I vote, no.

The SECRETARY concluded the calling on the first clause of the substitute of Mr. Curtis, and it was declared adopted by the following vote:

Ayes—Messrs. A. F. Allen, C. L. Allen, Archer, Armstrong, Axtell, Beals, Beckwith, Bell, Bickford, E. P. Brooks, E. A. Brown, W. C. Brown, Case, Clarke, Corbett, Curtis, C. C. Dwight, Ely, Endress, Francis, Frank, Gould, Hale, Hammond, Hand, Hitchcock, Houston, Hutchins, Ketcham, Kinney, Krum, Landon, Lapham, A. Lawrence, Lee, Miller, Opdyke, Pond, President, Prindle, Prosser, Reynolds, Root, Rumsey, Seaver, Silvester, Stratton, M. I. Townsend, Wakeman, Wales, Williams—51.

Noes—Messrs. Baker, Barto, Bergen, Cassidy, Chesebro, Colahan, Comstock, Corning, Daly, Develin, Duganne, Ferry, Field, Folger, Fowler, Garvin, Graves, Hadley, Hardenburgh, Harris, Hatch, Hitchman, Jarvis, Larremore, A. R. Lawrence, M. H. Lawrence, Livingston, Loew, Mas-

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ten, Mattice, McDonald, Monell, Murphy, A. J. Parker, Potter, Rathbun, Robertson, Rogers, Rolfe, Schumaker, S. Townsend, Tucker, Van Campen, Veeder, Verplanck, Weed, Wickham, Young—48.

Mr. FIELD—I move to reconsider the vote just taken, and ask that that motion lie upon the table.

The PRESIDENT—The motion will lie on the table, under the rule.

The question was then put on striking out the second part of the section, and it was declared to be lost by the following vote:

Ayes—Messrs. A. F. Allen, C. L. Allen, Archer, Armstrong, Axtell, Beals, Beckwith, Bell, Bickford, E. P. Brooks, W. C. Brown, Case, Clarke, Curtis, C. C. Dwight, Ely, Endress, Fowler, Francis, Frank, Gould, Hale, Hammond, Hand, Hitchcock, Houston, Hutchins, Kinney, Krum, Lapham, A. Lawrence, Lee, Opdyke, Pond, President, Prindle, Prosser, Reynolds, Root, Silvester, M. I. Townsend, Wakeman, Williams—43.

Noes—Messrs. Baker, Barto, Bergen, E. A. Brown, Cassidy, Chesebro, Colahan, Comstock, Corbett, Corning, Daly, Develin, Duganne, Ferry, Field, Folger, Garvin, Graves, Hadley, Hardenburgh, Harris, Hatch, Hitchman, Jarvis, Ketchum, Landon, Larremore, A. R. Lawrence, M. H. Lawrence, Livingston, Loew, Masten, Mattice, McDonald, Miller, Monell, Murphy, A. J. Parker, Potter, Rathbun, Robertson, Rogers, Rolfe, Rumsey, Schumaker, Seaver, Stratton, S. Townsend, Tucker, Van Campen, Veeder, Verplanck, Wales, Weed, Wickham, Young—56.

Mr. COMSTOCK—Is it in order now to offer an addition to the substitute as accepted?

The PRESIDENT—An amendment of that kind is in order.

Mr. COMSTOCK—I move, then, this amendment, to come in immediately after that portion of the substitute which has been accepted by the Convention: After the word "purposes" insert "All laws inconsistent with this section are abrogated from and after the 1st day of May, 1869." On which I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. COMSTOCK—I am asked by several gentlemen whether that would not be the effect of the provision without the amendment? I say no; most assuredly not. The substitute or constitutional provision which has just been adopted leaves all the laws in force by which these commissions are established, and leaves the commissions in force. My amendment abrogates them from and after the 1st day of May, 1869, so as to give time for the next Legislature to supply the vacuum.

Mr. BICKFORD—Will the gentleman change it to June? My reason is that the election provided for by the article will be in April, and perhaps there would not be time for the new officers to go into power.

Mr. COMSTOCK—This Constitution, if ever adopted, will be adopted, I suppose, before the 1st day of January next, and it will give the Legislature from that time until May to adopt the necessary legislation and supply the vacuum.

Mr. FOLGER—I certainly understand the effect of the proposition which was just adopted by the Convention, as does the gentleman from Onondaga [Mr. Comstock], and that is the reason that I voted against it. It is an entirely unnecessary proposition for this Convention to adopt, inasmuch as it is but reiterating what we have already put into the Constitution some months ago. If it is proposed to abrogate existing laws, it needs the amendment proposed by the gentleman from Onondaga [Mr. Comstock]. As I do not wish to abrogate them, I shall vote against the amendment.

Mr. COMSTOCK—The Convention will understand of course that the provision of the Constitution as already adopted preserves the police and sanitary commissions.

Mr. FOLGER—I allude to still another provision which was adopted on the motion of the gentleman from Kings [Mr. Veeder] some time ago, when we were in the Assembly Chamber—the very provision under which the court of appeals has sustained the power of the Legislature to create and sustain all these commissions.

Mr. DUGANNE—It is in vain, sir, that gentlemen attempt to abrogate the State right by the simple abolition of these geographical districts. We may adopt the amendment, sir, but inherent in the State Legislature, no matter what you do, no matter what restrictions you place around cities, no matter how you provide for the election or appointment of local city officers, always and forever, while the State exists, the supreme law can delegate its State officers to act within or without any municipality. You cannot get rid of it. You may name your prohibition as you please. You may destroy these districts, civil or political, but you cannot prevent the State from appointing its own commissioners, and appointing such officers to act in any part of the State of New York. I am willing, sir, to meet the gentlemen who are opposed to commissions half way. I am prepared, as I have been to accept the compromise embodied in the minority report of the gentleman from Kings [Mr. Murphy]. I desire to harmonize the differences that exist. I wish our Constitution to go down to the people without any threat hanging over it of its rejection because of any clause in relation to cities. Not that I care about threats; not that I regard the declarations of opinions of gentlemen here as in the light at all of prophecy. I am accustomed to hear predictions from politicians, and I am used to see the people nullify such predictions, guided as the people always are, by the common sense of their own manhood. But, sir, I think that the majority in the Convention have already evinced a desire to harmonize upon the questions involved in this article upon cities. They have shown a willingness to take middle and common ground, and have invited, as I myself cordially wished, gentlemen of the minority to come and occupy the middle ground with them. I believe that commissions can be, will be, and have been abused. I think they are, at best, only safety-valves, only governors, only regulators, and should not be permanent; and therefore I object to their being made permanent by incorporation in the Constitution. I object, on the other hand, to any clause by which an independent position shall be

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secured to cities during the space of twenty years. For if we admit the principle that the Constitution can confer certain independent privileges and rights above the sovereign State for the period of twenty years, we admit also that the State may alienate, for ninety-nine years, or a thousand, its right of sovereignty over the territory and the government of cities. Now, sir, I think this thing has gone far enough. I believe that we should give and take as regards views or prejudices. I think, as sensible men, we ought to harmonize; and, therefore, I believe it is best to strike out these provisos altogether, and leave it to the sovereign power of the State the power and duty of regulating the affairs of cities, knowing, as we do, that the State can override by its own agencies all local officers and all local provisions that you may name in your Constitution. It is true that you may appoint officers of cities, and you may limit their powers; but you cannot prevent the State from entering upon this city and placing her officers there, and assuming the powers which have by her law been placed in the hands of elected officers; thus, in effect, leaving the elected officers powerless for good or evil, and vesting all authority in the agents of the State. Knowing this, sir, feeling that we cannot deprive the commonwealth of its sovereignty, I am yet willing, and would be glad to meet upon common ground in this article, and so adjust it that we shall prevent cities from assuming too much independence, while at the same time we inhibit the Legislature from exercising its legislation in matters of purely local jurisdiction. I therefore hope that this amendment will be voted down, simply because it assumes too much, and because what it assumes can be made inoperative at any time by the Legislature. I hope that it will be rejected, and that the entire section, on reconsideration to-morrow, will share its fate. Let us leave this matter to the Legislature, to the supreme law; and if the verdict of the people to correct any evil shall be hereafter expressed in an astounding and permanent majority of the democratic party, in heaven's name, sir, let it be so. Whenever the majority of republicans shall be in the wrong, I shall welcome the majority of democrats to right that wrong.

Mr. KRUM—I move the previous question.

The question was put on the motion of Mr. Krum, and it was declared carried.

The question recurred on the amendment offered by Mr. Comstock.

Mr. HARDENBURGH—I call for the ayes and noes.

The PRESIDENT—The ayes and noes have been ordered.

Mr. VERPLANCK moved that the Convention adjourn.

The question was put on the motion of Mr. Verplanck, and it was declared lost.

The question recurred on the motion of Mr. Comstock to amend the tenth section, on which the ayes and noes had been ordered.

The question was taken on the amendment offered by Mr. Comstock, and it was declared carried by the following vote:

Ayes—Messrs. Baker, Barto, Bergen, E. Brooks, E. A. Brown, Cassidy, Chesebro, Colahan, Comstock, Corning, Daly, Develin, C. C. Dwight, Ferry, Garvin, Graves, Hadley, Hale, Hardenburgh, Harris, Hatch, Hitchman, Jarvis, Kinney, Larremore, A. R. Lawrence, M. H. Lawrence, Livingston, Loew, Masten, Mattice, McDonald, Monell, Murphy, A. J. Parker, Potter, Prosser, Robertson, Rogers, Rolfe, Schumaker, S. Townsend, Tucker, Veeder, Verplanck, Wakeman, Wales, Weed, Wickham, Young—50.

Noes—Messrs. A. F. Allen, C. L. Allen, Archer, Armstrong, Axtell, Beals, Beckwith, Bickford, W. C. Brown, Case, Clarke, Corbett, Curtis, Duganne, Ely, Field, Folger, Fowler, Francis, Frank, Gould, Hammond, Hand, Hitchcock, Houston, Hutchins, Ketcham, Krum, Landon, Lapham, A. Lawrence, Lee, Miller, Opdyke, C. E. Parker, Pond, President, Prindle, Rathbun, Reynolds, Root, Rumsey, Seaver, Silvester, Stratton, M. I. Townsend, Van Campen, Williams—49.

Mr. MURPHY—I wish to give notice of a motion to reconsider the section offered by the gentleman from Richmond [Mr. Curtis,] amendatory of the second section, and I offer as an amendment to the section now under consideration to strike it out, and insert the following:

"No city shall be included in any other territorial division of the State for any purpose of local government unless the officers designated for such purpose, shall be chosen by the electors of such territory or appointed by some authority or authorities thereof having separately or jointly jurisdiction over all the parts of such territory, and all such existing territorial divisions are hereby abrogated."

The PRESIDENT—Does the gentleman call for the consideration of his motion to reconsider, at this time?

Mr. MURPHY—Not at this time.

The motion to reconsider was laid on the table, under the rule.

Mr. CURTIS—Will it be in order to strike out this section as amended?

The PRESIDENT—It will not be in order so long as there are propositions to amend them. A motion to amend must take precedence.

Mr. AXTELL—I rise to a point of order. The point of order that I make is this—that the previous question having been moved on this section, it cannot be amended.

The PRESIDENT—The gentleman form Clinton [Mr. Axtell] gave no such direction to his motion. It was simply on the pending question, which was the amendment.

Mr. KRUM—I moved the previous question, and only on the amendment.

Mr. AXTELL—I refer now to the first moving of the previous question. I thought, at the time, that the last amendment was out of order, and I did not raise the question.

The PRESIDENT—The Chair rules that the gentleman is too late with his point of order.

Mr. C. L. ALLEN—I move a reconsideration of the vote just taken.

The PRESIDENT—The Chair will inform the gentleman that the gentleman from Kings [Mr. Murphy] has the floor.

Mr. MURPHY—This amendment is intended to bring out fairly and squarely the question of

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local election, or local appointment, if I may use the phrase. No proposition has, as yet, been before us, in regard to the election of police and health officers within the districts in which their duties are confined. For one, I believe it is for the interest and welfare of those communities that these districts should exist in some cases and that especially the cities of New York and Brooklyn should be united for purposes of public health. There are many conveniences and advantages attending such a union. In case of riot the transfer of the police force from one city to the other would be of great service. In matters of public health, the causes of disease are likely to be common to both cities, and should receive the harmonious action of the authorities. These objects can be best accomplished by having one common control in those matters. I therefore recognize the propriety of the metropolitan police and health district, but, at the same time, I believe that the persons who shall be in charge of them, shall be elected in the districts either by the people or by some authority emanating from the people of those districts. It is for the purpose of bringing that point distinctly before the Convention that I move this amendment.

Mr. RATHBUN—I move that this Convention do now adjourn.

The question was put on the motion of Mr. Rathbun, and it was declared carried by a vote of 58 to 25.

So the Convention adjourned.

FRIDAY, January 31, 1868.

The Convention met pursuant to adjournment.

Prayer was offered by Rev. Mr. REESE.

The Journal of yesterday was read and approved.

Mr. SILVESTER—I desire to give notice that at some future time I will move to reconsider the vote by which section 15 of the article on finance was adopted; also to reconsider the vote by which the article on the organization of the Legislature was adopted, and to reconsider the vote by which the second, fourth and seventh sections of that article were adopted.

Mr. A. LAWRENCE—I yesterday gave notice that I would move to reconsider the vote by which the article on education was adopted. My object was to offer the amendment which I offered in Committee of the Whole in regard to the Cornell University, and should the ruling of the Chair require it, I give notice that I shall move to reconsider the vote by which the amendment offered by myself and amended by the substitute of the gentleman from Ontario was adopted; and I give notice that should that prevail I will move to reconsider the vote by which that substitute was adopted.

The PRESIDENT—The Secretary will note the notice as given by the gentleman from Schuyler [Mr. A. Lawrence].

Mr. GRAVES—I understood yesterday that the article on the judiciary had not been adopted.

The PRESIDENT—It has not been adopted.

Mr. GRAVES—Then, under the information given by the President yesterday, I shall move to reconsider the vote establishing the article on the judiciary, and if that be reconsidered, I will then move to reconsider the votes establishing sections 11, 16, 17 and 18 of said report;

Also, to reconsider the vote establishing the article on the Legislature and its organization, etc.;

Also, to reconsider sections 2 and 5 of said article;

Also, to reconsider the vote establishing the article on canals;

Also, to reconsider the vote establishing section 3 in said article;

Also, to reconsider the vote establishing the article upon the Governor, etc., or so much thereof as relates to the compensation of the Governor and its increase and diminution;

Also, to reconsider the vote establishing the report on the powers and duties of the Legislature.;

Also, to reconsider section 13 of that report.

The PRESIDENT—The notice given by the gentleman from Herkimer [Mr. Graves] will be noted by the Secretary. The order of the day is the consideration of the article reported by the standing Committee on Cities. The pending question is on the substitute of the gentleman from Kings [Mr. Murphy] for the third section. The substitute will be read for information.

The SECRETARY read the substitute as follows:

"No city shall be included in any other territorial division of the State for any purpose of local government, unless the officers designated for such purpose shall be chosen by the electors of such territory, or appointed by some authority or authorities thereof having separately or jointly jurisdiction over all the parts of such territory, and all such existing territorial divisions are hereby abrogated."

Mr. E. BROOKS—I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

The SECRETARY proceeded to call the names of delegates.

The name of Mr. Smith was called.

Mr. SMITH—I ask to be excused from voting. I have paired off with Mr. Alvord, but he has not yet arrived.

The PRESIDENT—The arrangement will be recognized in accordance with the practice of the Convention.

The substitute offered by Mr. Murphy for the third section was declared lost by the following vote:

Ayes—Messrs. Baker, Barto, Bergen, E. Brooks, Cassidy, Colahan, Comstock, Cooke, Corning, Daly, Ferry, Garvin, Graves, Gross, Hardenburgh, Hatch, Jarvis, Larremore, A. R. Lawrence, M. H. Lawrence, Livingston, Loew, Masten, Mattice, Monell, Morris, Murphy, Potter, Robertson, Rogers, Rolfe, Roy, S. Townsend, Tucker, Van Campen, Veeder, Verplanck, Wickham—38.

Noes—Messrs. A. F. Allen, C. L. Allen, Archer, Armstrong, Axtell, Beckwith, Bell, Bickford, E. P. Brooks, E. A. Brown, W. C. Brown, Case, Cheritree, Clarke, Corbett, Curtis, Duganne, C. C. Dwight, Ely, Endress, Field, Folger, Fowler, Francis, Frank, Gould, Hadley, Hale, Hammond,

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Hand, Hitchcock, Houston, Hutchins, Ketcham, Kinney, Landon, Lapham, A. Lawrence, Lee, McDonald, Miller, Opdyke, C. E. Parker, Pond, President, Prindle, Prosser, Rathbun, Reynolds, Root, Rumsey, Seaver, Silvester, Stratton, M. I. Townsend, Wakeman, Wales, Williams—58.

Mr. DALY—I rise to ask for information in respect to the order of business. Does the President understand that we are now acting upon the majority report in its order, or that as the basis of the action of the Convention the minority report is substituted for it?

The PRESIDENT—The basis of the action of the Convention is the majority report. The third section as amended is under consideration.

Mr. DALY—Do I understand from the Chair that after the amendments which have been pending, the order of business will be to take up the sections of the majority report as they occur in their order?

The PRESIDENT—The Chair so decides.

Mr. RUMSEY—As I understand it the third section as amended now is the tenth section of Mr. Opdyke's report.

Mr. A. F. ALLEN—I ask to have the third section as adopted by the Convention read by the Secretary.

The PRESIDENT—The Secretary will read the section.

The SECRETARY read the third section as follows:

"The State, for purposes of local government, shall be divided into towns, counties, cities and villages, as heretofore, and no other local divisions or districts shall be made except for sanitary and police purposes. All laws inconsistent with this section are abrogated from and after the first day of May, 1869."

Mr. RUMSEY—I offer the following amendment to that section:

Add at the end of section 3 the following: "Nothing in this article contained shall be construed to prohibit the Legislature from abolishing any office in such city except the office of mayor and comptroller."

There may, perhaps, be some doubt whether the clause contained in the second section that we have adopted will not constitutionalize these commissioners in the city of New York. Now, in my judgment, the whole of this question should be left to the Legislature, and if I had my way about it, I would insert nothing in this Constitution that should take from the Legislature control over the cities. At any rate I will not constitutionalize any other of the officers except those that are named in these sections, the mayor in section 1 and the comptroller in section 2, and that there may be no question in regard to the effect of this article, I offer this amendment.

Mr. VERPLANCK—My own impression is, that the best course to take now, is to lay the whole subject upon the table. We may make many improvements in the Constitution, but the people will not be satisfied with the improvements which we shall make, so long as any substantial right is withheld from any portion of the people of the State. In my own city of Buffalo, we have a police commission established by a party vote of the Legislature, under the dictation of a party caucus. I do not complain of those commissioners, or of the manner in which they have exercised their duties. It is not necessary that I should do so.

Mr. FOLGER—If the gentleman will permit me I will correct him. There was never a party caucus held on that bill, or if there was, I was not invited to it.

Mr. VERPLANCK—I was informed at the time of the passage of that bill that it was passed by direction of a caucus, and have always believed that to be the fact. If the gentleman from Ontario [Mr. Folger] says that there was no caucus, I accept his statement, but I was informed that the vote on that bill stood about forty-five to fifty in all its stages until after the caucus, when it was passed by a strict party vote under the operation of the previous question.

Mr. FOLGER—If I may correct the gentleman again, I will inform him that there is no "previous question" in the Senate.

Mr. VERPLANCK—When I speak of these things for the purpose of showing party action, I of course speak of the popular branch of the Legislature, and not of the Senate.

Mr. ROBERTSON—I would suggest to the gentleman from Erie [Mr. Verplanck] whether he is not mistaken in saying that it was a legislative caucus, and whether it was not a caucus of the Assembly alone, so that the Senators had no notice of it.

Mr. VERPLANCK—I do not know how that was, but I know that at that time it was said that the bill was passed under the dictation of a caucus. We have in this legislation an instance of the progress of usurpation. The discussion on this subject has related chiefly to the city of New York. And while some gentlemen have contended that it is the sovereign right of the people of the State to legislate specially in reference to different parts of the State, the great argument in favor of such legislation has been that the city of New York from its location, from its mixed population, required special laws for its government, and that for the proper regulation and government of that city it was necessary to have a police commission appointed under the authority of the central power at Albany. Has any gentleman upon this floor ventured to say that the people of the city of Buffalo are not perfectly competent to govern themselves and to select their own police commissioners? No such statement has fallen from any gentleman in this Convention; and yet the Governor and Senate select a police commission for the city of Buffalo. And, sir, they have taken away from us not merely the control over the local police but the name of Buffalo—

The PRESIDENT—The Chair must respectfully interrupt the gentleman from Erie [Mr. Verplanck]. The Secretary will read the proposition which is under discussion.

The SECRETARY read the amendment offered by Mr. Rumsey to the third section as follows. Add at the end of section 3:

"Nothing in this article contained shall be construed to prohibit the Legislature from abolishing any office in such city, except the office of mayor and comptroller.

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The PRESIDENT—The gentleman from Erie [Mr. Verplanck] will see that he was not discussing this proposition.

Mr. VERPLANCK—I believe I am called to order by the Chair. I was referring to considerations which have actuated the committee in their votes upon this question, and it occurs to me that if I can correct any suggestion used on this occasion, I am, I think, in order, and I submit, therefore, that I am not out of order.

The PRESIDENT—The gentleman from Erie will proceed in order, to discuss the proposition before the Convention.

Mr. VERPLANCK—Am I out of order in discussing it?

The PRESIDENT—The Chair thinks the gentleman is out of order in discussing it in so wide a range. The question is simply whether the Legislature shall be prohibited from abolishing any city officers except the mayor and comptroller.

Mr. VERPLANCK—That involves the question of the method of the appointment of these officers, and that is the very question I am discussing.

The PRESIDENT—The Chair cannot argue with the gentleman from Erie; he will leave it to the gentleman's own sense of propriety, of course reserving the right to call him to order if necessary.

Mr. VERPLANCK—I am very unfortunate in not being able to understand precisely what is in the President's mind; but as I am not allowed to proceed in the exercise of what I suppose to be my right as a member of this Convention—

The PRESIDENT—The Chair will not abridge any right of the gentleman from Erie.

Mr. VERPLANCK—I understand that my rights are abridged, but I may be mistaken. I will content myself now with moving to lay this whole subject on the table.

Mr. COLAHAN—Upon that motion I call for the ayes and noes.

A sufficient number seconding the call the ayes and noes were ordered.

Mr. AXTELL—I rise for information; I do not understand the scope of the motion of the gentleman from Erie [Mr. Verplanck.]

The PRESIDENT—The motion of the gentleman from Erie is to lay this whole subject-matter on the table.

Mr. SMITH—What will be the effect of the motion?

The PRESIDENT—The effect will be that the subject will lie there until called from the table.

Mr. VERPLANCK—May I be allowed to state my object in making this motion?

The PRESIDENT—The gentleman from Erie may state his object.

Mr. VERPLANCK—As the chairman of the committee is absent, and as I deem it utterly useless to struggle with this matter, I think we might as well dispose of it by laying the whole subject on the table.

The SECRETARY proceeded to call the ayes and noes.

The name of Mr. Murphy was called.

Mr. MURPHY—I ask to be excused from voting. I came to this Convention impressed with the necessity of reform in our municipal government by means of constitutional provisions, not only in respect to the particular question of commissions, which is the subject of so much interest and excitement here; but in regard to municipal government generally. I am not willing, therefore, sir, to give my vote as now proposed that this Convention shall not act upon this subject. I deem it my duty to stand and fight the battle of municipal reform to the end. But I find that my friends with whom I usually act are now taking a different view on this subject. I have great deference for their opinion, but I will not avoid the responsibility of carrying out my convictions against their opinion, and, withdrawing my request, vote "no."

The motion of Mr. Verplanck to lay on the table was declared lost by the following vote:

Ayes—Messrs. Baker, Barto, Bergen, Bickford, E. Brooks, Cassidy, Colahan, Corning, Develin, Ferry, Garvin, Graves, Gross, Hardenburgh, Hatch, Jarvis, Larremore, A. R. Lawrence, M. H. Lawrence, Livingston, Loew, Masten, Mattice, Monell, Morris, Potter, Robertson, Rogers, Rolfe, Roy, Schumaker, S. Townsend, Tucker, Veeder, Verplanck, Weed, Wickham—37.

Noes—Messrs. A. F. Allen, C. L. Allen, Archer, Armstrong, Axtell, Beckwith, Bell, E. P. Brooks, E. A. Brown, W. C. Brown, Case, Cheritree, Clarke, Comstock, Cooke, Corbett, Curtis, Daly, Duganne, C. C. Dwight, Ely, Field, Flagler, Folger, Fowler, Francis, Frank, Gould, Hale, Hammond, Hand, Hitchcock, Houston, Hutchins, Ketcham, Kinney, Landon, Lapham, A. Lawrence, Lee, McDonald, Miller, Murphy, Opdyke, C. E. Parker, Pond, President, Prindle, Prosser, Rathbun, Reynolds, Root, Rumsey, Seaver, Silvester, Stratton, M. I. Townsend, Wakeman, Wales, Williams—60.

The PRESIDENT—The Chair desires to say in relation to the gentleman from Erie [Mr. Verplanck] that it gives him great pain to seem to trench upon the rights or feelings of that gentleman, or of any delegate in this Convention, and he will now submit to the Convention the question whether the gentleman from Erie shall be heard in the line of argument marked out by him.

The question was put on allowing Mr. Verplanck to proceed, and it was declared carried unanimously.

Mr. VERPLANCK—Thanking the Convention for their courtesy, I will detain them but a few moments longer. I was about to say that, so far as the city of Buffalo is concerned, we have lost, under this police bill, even our name. The police, as established under this act, is confined to the city of Buffalo, but its name is the "Niagara frontier police," so that, from hearing the name, no one would suspect that it was the police of the city of Buffalo. I call attention to these matters, Mr. President, simply for the purpose of showing the progress of what I call usurpation on the part of the Legislature. It began in the city of New York and it has now reached the city of Buffalo. Such is always the progress of error, the progress of usurpation. It moves step by step in taking away the rights of the people; and I now ask this Convention to pause before

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they place in the Constitution this clause of interference with the local affairs of cities. This argument has proceeded under a misapprehension. A member of this Convention told me this morning that it was evidently the desire of the democrats to abolish commissions. Now, sir, we have been most unfortunate in this discussion if we have been so understood. Our desire is to change the mode of appointing the persons who are to control these commissions. That is all we ask. There is not a single commission in the city of New York that we have asked to have abrogated or abolished. We have not claimed here that cities may not have commissions; but what we claim is that the electors of the several cities or officers elected by the electors of the cities should appoint the officers of these commissions, instead of having them appointed at Albany, our desire being that the people may have their local matters in their own hands. It has also been claimed that this Convention have been liberal because they have followed the lead of the gentleman from Kings [Mr. Murphy], who, it is said, and with truth, is a leading member of the Committee on Cities and a leading member of the party in this State. I regret that the honorable gentleman was not satisfied to move the substitute which he suggested in his minority report, when the subject came up in the Convention, instead of allowing himself to be put in a position where he could be misunderstood, as he has been misunderstood in this Convention. I know that that gentleman is with his party upon this question as to a change in the mode of appointing these commissions, and the last amendment offered by him proves that fact, and when he offered the amendment which has just been voted down, it of course opened the eyes of every member of this Convention to the fact that he stands substantially with the majority of the Committee on Cities in their report. I have said before, and I repeat, that the people of this State will not be thankful for any improvement you give them, so long as you withhold from them any right, and you should not withhold, by constitutional enactment, from the people of the city of New York, or the people of the city of Buffalo, the right to control their own police.

Mr. DALY—I propose to make one or two observations upon the amendment offered by the gentleman from Steuben [Mr. Rumsey], but before doing so I will take the liberty, with the indulgence of the Convention, of saying something upon the general subject, which I trust will not be deemed out of order. What I have to say will be said earnestly but calmly, and with very great sincerity, as I, and the minority who think with me must abide by the action of this Convention, whatever that action may be. I voted against the last proposition to lay this whole subject on the table, because I agree with the gentleman from Kings [Mr. Murphy] that we who represent the cities of New York and Brooklyn came here with the expectation that we could get some provision embodied in the Constitution which would save those cities from the kind of legislation to which they have been subject for the past few years, and if we cannot get it, we shall have failed in accomplishing an object earnestly desired by the constituencies we respectively represent. Mr. President, I shall state what I understand to be the result of the action taken by the Convention in the adoption of the second section of the minority report of the gentleman from Kings [Mr. Murphy] as that section has been amended, and I do so for the purpose of enabling me to state more explicitly what we, who represent the two largest cities in the State, object to and what we desire. I do this that there may be no misunderstanding, leaving the Convention to take what action they think proper. I raise no question as to the honesty and integrity of the motives which has led to the adoption of this amendment. I desire simply to point out the effect of it, in the hope that the Convention may recall its previous action. The gentleman from Kings [Mr. Murphy] in the minority report which he submitted, provided among other things that there should be such officers in cities as the Legislature might direct. He then went on to declare in the second section how these officers should be selected, and declared that officers for whom no provision was made in the article should be elected by the voters or appointed by the mayors of the cities. Now, an entirely different effect has been given to this provision by the amendment offered by my friend from Richmond [Mr. Curtis], an amendment that I take the liberty of saying must have been very carefully considered, as it is very ingeniously drawn, to carry out the object which some of the gentlemen entertaining similar views to those of the gentleman from Richmond desire to accomplish. I am merely speaking of its effect and operation. That amendment changes this previous provision in the section and limits it to city officers. This term "city officers" covers but a very small class of officers, at least in the city of New York, and by limiting the provision to them there is excluded from the operation of the section the important class of officers embraced in the commissions. It certainly does exclude in the city of New York officers whose jurisdiction extends beyond the limits of that city, that is all who may be regarded as departmental or district officers, and so far as my present recollection serves me, that embraces the most important officers created by or acting under the existing commissions. The effect of this is, in the first instance, to put a positive provision in the Constitution providing for the election or appointment of city officers, which is impliedly recognizing in that instrument that those who do not now come under the designation may be appointed as the Legislature think proper. It is in fact an attempt, and an ingenious one, of declaring by the Constitution, without expressing it, the legality and propriety of the present mode of appointing the officers of the health, police, excise and other commissions. Now, the gentleman from Kings [Mr. Murphy] proposes to qualify this effect by the substitution of the tenth section of the majority report for the third section, but this, in my judgment, will not accomplish the purpose he has in view or restore the section to what it was. I do not propose to debate the question. I will state upon my reputation as a lawyer, that the construction of these two sections, if adopted;

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even supposing the latter one calculated in some degree to effect the object which the gentleman had in view, would, lead to endless litigation. Time is too precious to argue that question fully now, and I content myself simply with making this statement upon my professional reputation. The gentleman from Onondaga [Mr. Comstock] amends the tenth section (which has been converted into the third section of the majority report) by declaring that "no local division or district shall be made except for sanitary and police purposes."

Mr. COMSTOCK—That is not my amendment.

Mr. DALY—That is the section read as amended.

Mr. COMSTOCK—That is the section without my amendment.

Mr. DALY—I may be mistaken. I supposed from the reading of the section —

The PRESIDENT—The Secretary will read the section for information.

The SECRETARY read as follows:

"The State, for purposes of local government, shall be divided into counties, towns, cities and villages, as heretofore, and no other local divisions or districts shall be made except for sanitary or police purposes."

Mr. COMSTOCK moved to add as follows:

"All laws inconsistent with this section are abrogated from and after the first day of May, 1869."

Which was adopted.

Mr. DALY—Then I understood it correctly, and I say in reference to the section even in its present form, as now further amended, that in my judgment it would still create infinite difficulty and litigation. As I have already said, I do not propose to argue the matter, but I will simply suggest that the inquiry—"What are police purposes?" would with me if I were called upon as a judge to determine it in its connection with the local affairs of the city I represent, and with which I profess to be familiar, give rise to the greatest perplexity, and I say this with all respect to the gentleman who proposed the amendment. I have thus stated what will be the effect, in my judgment, of the provisions to which this Convention has given its sanction, and I propose now to state what it is that we of the city of New York object to, and what we desire, so that there may be a clear and fair understanding. What I complain of is, that this amendment of the second section is drawn that it may effect an object without indicating the object to be effected in such a way that it required a great deal of study on my part before I could understand the real bearing and effect of it. This is not the way in which a constitutional provision, which is to become the fundamental law, should be enacted. Let the whole scope and meaning of the article under consideration be distinctly understood, and then if the Convention determine that they will not incorporate in the fundamental law what we, representing one of the principal cities of the Union, think necessary for its protection, let the Convention say so distinctly and clearly, and not seek to accomplish an object or avoid a reponsibility, by ingenious contrivances like this amendment. Let the majority deal with us in a straightforward manner, and if they overrule us, we will submit and concede that here, at least, the question is settled, and that we have our appeal to the people. Mr. President, in the first place, what we desire, so far as I understand the expression of opinion upon the part of my colleagues, either upon this floor or off it is, that we desire the enactment of that provision of the majority report which makes the mayors of cities, and consequently the mayor of the city of New York, an officer of that dignity and character which the chief executive officer of that great metropolis should be, that restores to him those powers which have been diminished by a course of successive legislation for a period of nearly twenty years, and puts him in his true position as the real executive head of the city government. The plan of the majority separates in the first place from the general organization of the city the department of finance, which, in our city, is the largest of any city in the United States. It leaves that great department where it is now, under the comptroller who is elected by the electors of the city, and has the power of appointing his subordinates. The plan then provides that the mayors of cities shall be elected for three years; but whether for three or two years, is not a matter of much consequence. It provides that the mayor shall have the power of appointing the heads of the departments, and that the departments shall have the power of appointing their subordinates; thereby recognizing the necessity of having as the head of the great executive organization of a city like New York, an officer directly responsible for those whom he selects as the heads of departments, and through that responsible, to a certain extent, for those whom they appoint as their subordinates. What we object to is not commissions as such, for it is of little consequence whether they are called commissions or departments. Some of them are undoubtedly efficient and well administered, and will perhaps, retain their present shape in any form of the city government. The objection at present is, that there are eight or ten of them representing the complex machinery of the government of a city like New York, and that each of them is independent of the other. No one has any check upon the other. There is no unity, no systematic organization of the whole, and no responsibility, except so far as it may exist under the three modes in which the heads of departments are appointed. A power exercised not in the locality, not in the city of New York, but here in the city of Albany. These three modes are: first, by naming the individuals in the act creating the organization or commission; second, by appointment by the Governor of the State; and third, as in the case of the police commissioners, by a vote of the Legislature, which is, in my judgment, one of the worst modes of appointment which was ever devised. These are the three modes by which the chief officers at the head of and who control the executive departments in the city of New York, with the exception of the board of education, are appointed, and our objection, clearly and distinctly stated, is, that the cities of New York and Brooklyn are deprived thereby, through the acts of

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the Legislature of the right of local self-government, which is one of the chief distinguishing features of our republican institution. That they are, and have been, kept in this State for no better reason than the unfounded one given by the gentleman from Richmond [Mr. Curtis], that they are different from all other cities, or, in the language of the gentleman from Columbia [Mr. Gould], because they are, as contrasted with the other parts of the State, so impure and vicious, and that gentleman conveys his idea of the city which I have the honor to represent by comparing it to a common sewer—that general receptacle of every species of filth and impurity. He would have us believe that there is, in that city, an aggregation, upon a scale so extensive and so unexampled, of vice, corruption, immorality and crime, that it must be governed by a totally different system from that which exists in other cities in the State or in the Union, or in other countries. It is a very common thing with gentlemen dwelling in rural districts to entertain such sentiments respecting metropolitan cities with which they have little practical acquaintance. To put themselves upon an elevated pinnacle, and air their virtue with the complacent reflection, "I am holier than thou." It is an innocent self-deception, and one with which we of the city of New York, are not disposed to quarrel or disturb by expressing our opinion of those, from the other parts of the State, who have controlled its legislation for the past few years. We have no desire to protract discussion; no desire to create animosities, for there has been little to complain of upon that ground in the Convention, the intercourse of the members having been, throughout, courteous and pleasant. All that we desire is that the question of the municipal right of the city we represent shall be distinctly passed upon. That we shall not be cut off by intermediate provisions, but that action may be deferred until we come to the seventh and eighth sections of the majority report, which clothes, in language carefully expressed, the chief magistrate of a city with powers which, in our city, at least, we deem essential to the dignity, influence and importance of his station, and that then that section shall be deliberately passed upon, and either adopted or rejected, as an expression of what this Convention means to do, or not to do. Having said this, I now desire to say that the amendment offered by the gentleman from Steuben [Mr. Rumsey] has at least this merit in it, that it does distinctly modify the operation or effect of the second section, so that it shall not take away from the Legislature the power of abolishing any one of these offices, which might possibly, from the peculiar language used, be the construction of that section as adopted, and in that respect the section is better with this amendment than without it. In conclusion, I will say in general terms that what we particularly wish—and by "we" I mean the city of New York—is that we may by a provision in the Constitution have our very complex municipal government symmetrically organized, under a responsible head, and not composed, as it is now, of disjointed and independent parts; and that that head should be the mayor of the city. He is now but the nominal head, for he is nearly shorn of every power. Large powers which he previously possessed, and which the mayors of other cities possess, have, by successive acts of legislation, been separated from the office and lodged in the commissions, or in the common council, either of which bodies, in the exercise of them, act independently of him. The gentleman from New York [Mr. Opdyke] stated the other evening the position in which he found himself as mayor of the city when the riots took place. He said he asked the police commissioners to call out the military, and that they would not do it; that they did not know whether they had the power. He looked into the question to see whether he had the power, and he thought he had under the operation of an old statute. I think, in all courtesy, that he was mistaken. I once had occasion to examine that question in reference to the Astor place riot, and the conclusion I arrived at was that the mayor had not that power.

Mr. OPDYKE—If the gentleman will allow me, I stated that I had serious doubts of my right under that law, because I thought it had been taken away by the act creating the metropolitan police; but, under the necessities of the case, I assumed the power and took the responsibility.

Mr. DALY—I misunderstood the gentleman. I merely cited the case as an illustration. That gentleman did what any magistrate should have done under like circumstances; he took the responsibility as General Jackson did at New Orleans, and saved the city by so doing. I ask is this the condition in which a great city should be placed? With eight or ten commissions, all separate and independent, and one of them, the police commission, doubtful of its power in an imminent public emergency. A municipal government in detached parts, without cohesiveness or a common head. My colleague from New York [Mr. A. R. Lawrence], the other evening, showed, by details, the practical workings of this system, and that it had resulted in an enormous increase of the public expense. What we most particularly want is that there should be in our city, as in every other city, some one officer who represents the city. Mr. President, there is not in any city in the world, with which I am familiar, a chief magistrate occupying so humiliating a position as the mayor of the city of New York. Why, sir, in France, where centralization is carried out as a system, it is not as bad; for, if I am not mistaken, the mayor of Paris has more power at the present time than Mayor Hoffman has in the city of New York. I ask the question in all sincerity, is it the deliberate judgment of the members of this Convention that the city of New York should be left in this state? The gentleman from Steuben [Mr. Rumsey] says that it is a matter to be left to the Legislature. We ask that it shall not be left to the Legislature. If this Convention agree with him and mean to leave the whole subject alone, very well. Let the Convention so express itself clearly and unmistakably. Our proposition is a distinct one. We ask that there shall be incorporated in the Constitution, imbedded there as a fundamental principle, a provision by which the mayor

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of New York, like the mayors of other cities, shall have the power to appoint the heads of departments, instead of having a number of independent departments, the heads of which are appointed by and responsible only to the central power at Albany. We care not whether that central power be democratic or republican. We say it is fundamentally wrong, and that it is a violation of the right of local government. I use the word right not in the sense that it is not in the sovereign power of the people to order otherwise. My friend, Mr. Stratton, must have a very low opinion of my character as a lawyer, if he supposes I meant to say that, without a constitutional provision it would not be in the power of the Legislature to deprive the city of New York of any right. Undoubtedly, the sovereign power is in the Legislature, as representing the people, except so far as it is restricted by constitutional provisions. Where they do not exist it is independent, and it may deprive the city of New York of any rights except what is secured by the provision in the Constitution of the United States, which guarantees at least to every State a republican form of government. I thank the Chair for indulging me in making these remarks, and I thank the Convention for the attention with which they have listened. I think that I am not assuming too much in saying that the desire of my colleagues, so far as the city of New York is concerned, is that, there shall be a clear and distinct vote upon the question whether the provision in the report of the majority of the Committee on Cities, providing for the appointment of a mayor, who shall have power to appoint the heads of departments, shall be incorporated in the Constitution or not. If that is not incorporated in the Constitution, I think we all agree, that, so far as regards the other provisions it is not very material to us what the Convention shall do in respect to them. Some of them will undoubtedly have to be stricken out. I have only a word more to say, if I may be permitted to say it without departing from the rules of order. The gentleman from New York [Mr. Duganne] said something in regard to rising upon this floor and prophesying. Now, Mr. President, I did say something the other night in regard to the effect of disregarding the wishes of the people of the city of New York. I said it in all sincerity, not desiring to assume the mantle of the prophet, but to express simply my opinion, and I call the gentleman's attention to the fact that early in the summer, with equal sincerity, I said in this Convention that, in my judgment, the provision which the majority were about to incorporate into the Constitution in regard to negro suffrage would result in the defeat of the Constitution. The gentleman and those who voted with him thought otherwise and incorporated that provision in the Constitution. He no doubt thought the opinion then expressed as unfounded as the one I now express, and if he and they are of the same mind still I will leave it to the future to determine, if the Constitution is submitted in that shape, whether my judgment or theirs was right. It cannot be determined until the Constitution is voted upon, but the fate which has attended a similar provision in the elections which have since occurred in Ohio and other States, is an unmistakable indication of the opinion of the people and foreshadows what the result will be in this State. These elections have no doubt convinced many members of the majority of the necessity of a separate submission of that question, when nothing else would. I urge upon the majority now the necessity, if they wish to have the Constitution adopted, of protecting the municipal rights of the city of New York from legislative encroachment. I repeat what I have already said, that there is a deep-seated feeling in the city of New York upon this subject, which has been intensified by the course of legislation that has been pursued in respect to that city since 1857, and for some years previously. I say it again as my deliberate opinion, that if there is not some provision in the fundamental law to protect that city from this disposition on the part of the Legislature—some provision to save it from this encroachment of the central power upon the local right of self-government—then the great mass of the electors of that city will record their votes against this Constitution. They will not, if they can help it, submit to be governed in their local matters by the people of the State. They will insist, and never cease to insist, upon a right recognized in every other part of the State and denied to them alone. They consider it one of the most important rights which a municipality can claim, and when the time comes they will so express themselves.

Mr. BICKFORD—I wish to ask the gentleman from New York [Mr. Daly] a question. I wish to ask whether he and his constituents intend to make the question of the control of the police in the city of New York *sine qua non* in the matter of giving their support to this Constitution—whether nothing else will satisfy them?

Mr. DALY—I suppose I have answered the gentleman's question by stating that the seventh and eighth sections of the majority report is what we desire to have enacted. There is no reason that I can see why the head of the police department should be appointed in Albany and the heads of the other departments in New York.

Mr. GARVIN—I desire to suggest to my colleague [Mr. Daly] that I did not clearly understand him in his remarks in reference to the amendment offered by the gentleman from Steuben [Mr. Rumsey]. That amendment provides, as I understand it, a prohibition in terms that no other or different commissions shall be created for the city of New York, except such as have been already provided for in this Constitution; in other words, that for police and sanitary purposes the Legislature may exercise exclusive control, but as regards all other things the Legislature shall—

Mr. RUMSEY—The amendment I offered simply declares that the construction of that section shall not be such as to prohibit the Legislature from abolishing offices in the city of New York, except those of mayor and comptroller.

Mr. GARVIN—I would like to know if my colleague [Mr. Daly] declared himself in favor of the amendment?

Mr. DALY—I am against the whole section; but as I hastily read the amendment of the gen-

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tleman from Steuben [Mr. Rumsey], it seemed to me to be an improvement upon the existing section, as it does not restrain the Legislature, which I think the section does, from abolishing any of these commissions if the Legislature should think proper to do so hereafter. It may possibly be liable to the construction which my colleague [Mr. Garvin] puts upon it, that it is a distinct recognition that they shall not create any additional commissions: but I have not viewed it in that light, and it does not strike me as susceptible of that construction.

Mr. ROBERTSON—The proposition, as I understand it now, is the amendment offered by the gentleman from Steuben [Mr. Rumsey], that the Legislature shall not, by any construction or by any expressed language contained in the section, be deprived of the right of removing any officer except the mayor and the comptroller of the city.

Mr. RUMSEY—The gentleman's colleague [Mr. Daly] insisted that the probable construction of section 2 was that it legalized the existence of all the officers in the city now existing. This amendment was framed to avoid that probable construction. That is all there is of it.

Mr. ROBERTSON—I am opposed to this. In the first place, I regret to differ from my friend from Steuben [Mr. Rumsey], who is always discreet, always prudent, as to the necessity of introducing this clause in the Constitution. I do it because I think it tends in some measure to sustain the heresy, which has been attempted to be forced upon us as a necessary conclusion from the arguments of those, who are willing that the cities should be allowed to govern themselves by their own inherent power, and self-respect and intelligence and morality, and implies that the Legislature may be deprived of the authority over cities, which they have, over the rest of the State. I do not pretend to assert, and I presume that no one, who thinks with me, will pretend to assert that the Legislature of the State of New York, by any thing contained in this Constitution, as adopted or reported, would be deprived for one moment of the power of abolishing every city in the State, and every town and every village, and creating some kind of government over the population of those cities or towns which would be neither urban, nor town, nor village. A city when created is altogether a creature of legislation. There is not an institution in this State created by the Legislature of the State which is not its creature, and cannot to-morrow be driven out of existence, cannot be shorn of its power so that it may fail hereafter to be known in history by any name. The city of New York is a time-honored institution, and has come down to us as one well known in the history of the State of New York. But when we are talking of the organic institutions of this State, or in reference to the administration of justice, and the enforcement of laws for the preservation of order and property, and rights throughout the whole State, who has dared to say upon this floor or elsewhere that the people of the State of New York represented by its constituted governing authorities has not the power to destroy, and has not the power to reduce the city of New York to a congeries of towns, villages or rural settlements, or has not the power to reduce the city of Brooklyn into the original fragmentary settlements from which it sprung, leaving those original settlements to be simply parts of the county of Kings. But we ask, whoever the thing known as a city from time immemorial, as the necessary creation of the law, shall come into existence—when it is created to govern a large and compact body of people, having various interests—when it is necessary to have a government which is to control and direct, and watch the interests of that vast body of people, that the Legislature shall not interfere, or undertake to intermeddle, either for private, political or any other purposes with the government of that city. We do not say to the Legislature "Do not unmake the city of New York—do not forfeit its charter—do not level down the bulwark of protection of the Constitution"—but we say, "When you make a city, you must not touch that city so as to interfere with its internal government" That is the whole question in this case. Why have we gone into the question whether the police commission has been properly administered, and whether the sanitary commission has been productive of good health in the city and the State? Why have we gone into the question, whether the suppression of intemperance in drinking and the suppression of crime by commissions in New York has been successful or not? What are all these things but rallying cries of party which would have been much better bandied in the newspapers, or on the stump, than indulged in here, because we have not time to indulge in them in our deliberations in this Convention. These commissions may all have been well managed. We may have their good management paraded before us, but will any gentleman say that the cities of this State, within their own borders, cannot furnish as good men as can be furnished by the authorities of the State to administer the laws within their boundaries.

Mr. M. I. TOWNSEND — I feel myself constrained, Mr. President, to rise to a question of order. I do not wish to interrupt gentlemen in this debate, which has lasted for ten days, but I think my friend from New York [Mr. Robertson] is not in order in the course of remark.

The PRESIDENT—The Chair rules that the gentleman from New York [Mr. Robertson] is in order.

Mr. ROBERTSON — I had thought I had placed myself in a position to be well understood, as I meant to throw aside all these debatable and party considerations, and plant myself upon the impregnable rock of principle. Cities, whether you call them necessary evils or a great good, exist in every country. In every place where the State thrives, where it has an industrious, energetic population, where it has commercial advantages, and where it has empire, cities must spring up. They are acknowledged by our Constitution. Where do we get the name of *cities*? Are we creating cities for the first time by a Constitution, or are we adopting a name known to all of us as distinguishing a form of government of bodies of men gathered around a commercial center, a name as much recognized as State, or people or nation? I only

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say that when we do this, when we make a city, let us make it one indeed with all its powers and energies unimpaired; let it be self-formed; let us not ask the rest of the State for aid except in case of foreign invasion; let us govern ourselves in the city as you let any other great and growing people do. The inhabitants of the city of New York are a people now equal in numbers to many of the States of the United States, while in wealth we are far greater. We are allowed to elect members of the Assembly and Senators, and to vote for Governor, the chief executive of this State, and yet it is contended that we are not capable of electing our own local officers or boards, which are to arrange and control the administration of our local affairs, which are of the highest interest to the population within the borders of that city. The city of New York has been taken as an exemplar for all other cities, and I would ask what it is which makes it necessary that the control of the city of New York in its local government, should be handed over to the Legislature. If the city is so sunk in vice, so debased in poverty, ignorance and immorality; if we have all these evils existing there, in so intense a degree that the people cannot bear up under it, existing as a city, abolish your city. Do not in the face of the world have it said that we are incapable of governing ourselves, and that we are only capable of government, when that government is spread over the entire State. Monarchists and others taunt us with the idea that men cannot govern themselves. Are you ready to say that a large body of people in a republican government are only capable of helping to govern the State, and are not capable of governing themselves? Are you ready to say that there are people who are competent to elect Governors, State officers, Senators and members of Assembly; but are yet not competent to elect police commissioners for their own government? Is not this absurd and contradictory of itself? Does it not overthrow the principle of republican government? Does it not say with one voice, "you, as a part of the people, are competent to participate in the government," and then say, "you are not capable, but must go to the Legislature?" I will not say any thing about the fairness, justice, and energy with which these commissions have been administered; but I mean to say that we can get as good men in the city of New York to fill these commissions, as can be appointed by the Governor of this State. We have a mayor of the city of New York, who last year was candidate for the office of the Chief Executive of the State, and he only lost his election by a very small majority. If he had been successful in his appeal to the people, and the sphere of his public life had been enlarged to take in the whole State, I ask whether he would have gained any broader range of vision in regard to the political institutions of the State, than he has, where he is, with hardly any power, and with no higher functions than to appear on fete days, to receive foreign visitors to the city of New York, to issue an occasional proclamation, and to veto bills making sewers to the city? I would ask whether he would acquire by that transfer, virtues which he does not have in his present position? If we can select a man in the city of New York, competent to become Governor of the State, I would ask if we are not equally competent to furnish men to fill inferior positions. I am unwilling to have on the face of this Constitution any thing which implies that it has assumed anywhere that the Legislature of this State and the power of this State, cannot at any time abolish any city, town or village in this State, whenever the existence of that city or village is inconsistent with the safety and welfare of the people of the State; but until then I ask that they be left autonomous.

Mr. WAKEMAN—Mr. President, I have been, in the past, in favor of giving to the cities of this State all the power they should have, consequently, I voted for the amendment of the gentleman from Onondaga [Mr. Comstock] last night. My design has been to restore to the cities all the power that has been taken from them, except, perhaps, in the two instances of the police and sanitary regulations, which have been already excepted. I did suppose, sir, that if we should allow the cities to control the affairs in them in all particulars except these two, the gentlemen representing the cities would be satisfied, rather than to say here that the whole Constitution should be voted down unless they could have the entire control in their own way. I was in the Legislature in 1857, when the celebrated metropolitan police bill was passed, and I know well the position of things then. People came to Albany from the city of New York without distinction of party, asking us to do something to improve the police arrangements of that city, and although the ultimate vote was a party vote, almost entirely so in the Assembly, that bill was not at the time regarded or asked for as a party measure. There seemed to be a necessity for something to be done, and the citizens of New York appealed to the Legislature for aid. It may again happen that the power of the Legislature may be invoked, and I would ask if it is proper that we should withdraw all power of the Legislature over, the subjects that I have mentioned, so that the Legislature can have no control whatever over the cities. I, sir, have no doubt at the present day, in view of what has taken place in the organization of the metropolitan police, that the city of New York would organize a police that would be a respectable body, and perhaps answer every purpose; but let me ask gentlemen here, suppose that we withdraw the power of the Legislature from interfering, in case the police should at any time be what it ought not to be for the public interests, and not be such a police as is required for the protection of the city of New York, should there not be some power behind the cities to interfere and have a remedy for the difficulty? I believe now I should be willing, as a legislator, to vote to give the cities a right to appoint their own police, reserving the right, however, to interfere in case the system did not work well. Is there not a distinction as between the police and the sanitary regulations of the State and those functions that are performed by these other commissions? I think there is. Formerly, in the history of our State, the Governor had the power of appointing

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sheriffs, district attorneys, judges, etc. At the present time he is the chief executive of the State, and commander of the military forces, and he is charged with a faithful execution of the laws of the State. More than that, sir, he has to surrender up criminals when properly demanded by the Governors of other States. He is the chief police officer of the State, if I may so term him. Now, sir, in reference to this matter. I submit that while, as a general rule, local authorities should have control of their affairs, yet, inasmuch as I, and citizens generally are interested to be protected in cities, the Legislature should retain the power to see that all are adequately protected. I have always admired the language of an officer in Massachusetts who said when he was assaulted, "I do not care any thing about this matter personally myself, but I give you to understand if you shake me you shake the Commonwealth of Massachusetts." I think so far as the police regulation of cities is concerned, it should be backed by the whole power of the State, whether the regulations be applied to the city of New York, the city of Buffalo, or the village of Batavia where I reside. Now, gentlemen have complained here because we make one law for the country and another for the city. What I have been willing and anxious to do, is to give the cities some constitutional provision to protect them. I had hoped that the delegates would be willing and satisfied if they could receive a constitutional indorsement here of their views in regard to the matter except as to the sanitary and police regulations of the State. Gentlemen know full well that every portion of the people of this State are interested in the question of the sanitary regulations of the city of New York. Much depends upon that regulation whether or not the pestilence shall be introduced into the city of New York, and thence be conveyed over the length and breadth of the State. Are they not willing that we should reserve the power to interfere in case the city of New York should not properly protect the rights, property and health of the people of the city by their regulations. I am willing to go with the gentlemen from New York so far as I can, and give them control of their own municipal affairs, but I think in these particulars which I have referred to, there should be an exception. If gentlemen are not satisfied with this and prefer to leave the whole subject under the control of the Legislature where it is now, and have no enactment whatever, I will unite with them in that proposition, but it seems to me that the gentlemen had better except police and sanitary regulations. I would even give them control of that, but with the reservation that the Legislature might interfere in case the city of New York should not in its police and sanitary regulations act for the best interests of the people. I merely rose to state my position and to explain what might seem an inconsistency with the vote I had previously given.

Mr. AXTELL—As this subject has been some ten days under discussion, and we have listened to many speeches, I move the previous question on the amendment of the gentleman from Steuben [Mr. Rumsey].

Mr. VAN CAMPEN—I hope that the gentleman will withdraw his motion.

Mr. ROBERTSON — As several gentlemen have changed their views on this subject, and for the purpose of further discussion, I move to lay the matter on the table.

The PRESIDENT—The motion for the previous question takes precedence.

The question was put on the motion of Mr. Axtell to order the previous question, and, on a division, it was declared carried, by a vote of 45 to 35.

The PRESIDENT announced the question on the amendment offered by Mr. Rumsey.

The ayes and noes were called for, and a sufficient number seconding the call they were ordered.

Mr. ROBERTSON—Did the Chair state that my motion to lay the subject on the table was out of order?

The PRESIDENT—The Chair holds that the motion for the previous question takes precedence: In the list of motions the motion for the previous question stands No. 4, and the motion to lay on the table No. 5.

The SECRETARY proceeded to call the roll on the amendment of Mr. Rumsey.

The name of Mr. Van Campen was called.

Mr. VAN CAMPEN—I desire to be excused from voting. I desired to obtain the floor in order to state my position. I differ with my party as to the manner of selecting officers, and as this question involves the whole principle, I desire to be excused.

The question was put on excusing Mr. Van Campen from voting, and it was declared carried.

The SECRETARY concluded the calling of the roll, and the amendment of Mr. Rumsey was declared carried by the following vote:

Ayes—Messrs. A. F. Allen, C. L. Allen, Archer, Armstrong, Axtell, Baker, Beals, Beckwith, Bergen, Bickford, E. Brooks, E. P. Brooks, W. C. Brown, Case, Cheritree, Clarke, Comstock, Cooke, Corbett, Curtis, Daly, Duganne, O C Dwight, Ely, Endress, Field, Fowler, Francis Frank, Garvin, Gould, Hadley, Hammond, Hand, Harris, Hitchcock, Houston, Hutchins, Jarvis, Kinney, Landon, Lapham, Larremore, A. Lawrence, M. H. Lawrence, Lee, McDonald, Miller, Murphy, Opdyke, C. E. Parker, Pond, President, Prindle, Prosser, Rathbun, Reynolds, Robertson, Root, Rumsey, Schumaker, Seaver, Silvester, Smith, Stratton, M. I. Townsend, Wakeman, Wales, Wickham, Williams—70.

Noes—Messrs. Alvord, Cassidy, Colahan, Corning, Ferry, Flagler, Graves, Gross, Hardenburgh, Ketcham, Livingston, Loew, Mattice, Monell, Morris, A. J. Parker, Potter, Rogers, S. Townsend, Tucker, Veeder, Verplanck—24.

Mr. JARVIS—I offer the following amendment. Add to the section as amended the following:

"The persons, however, now filling the offices of mayor and comptroller in the cities of New York and Brooklyn respectively, shall continue in office until the expiration of their several terms as now established by law."

Mr. GARVIN—Will the gentleman allow me

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to suggest that he put in the words—"the mayor of any city in the State?" If this article is intended to reach the other cities in the State, we had better so express it.

The PRESIDENT—Does the gentleman from New York [Mr. Garvin] offer a further amendment?

Mr. GARVIN—Merely to cover other cities in the State; put in the words "and other cities in the State."

Mr. JARVIS—I accept the amendment.

Mr. M. I. TOWNSEND—I move that after the word "comptroller" the word "chamberlain" be inserted, because in many of the cities of the State the person who is called the comptroller, in other cities is called the chamberlain.

Mr. JARVIS—I accept the amendment.

Mr. LOEW—I would move to amend the amendment by including "all other city and county officers"—these words to be inserted after the word "chamberlain."

Mr. GARVIN—These are all mentioned in the article.

Mr. ALVORD—I suggest that it would be better to use the term "financial officers," instead of comptroller and chamberlain.

Mr. M. I. TOWNSEND—I accept the amendment.

Mr. JARVIS—I accept it also.

Mr. LAPHAM—I would suggest that the better form would be the words "all officers in the cities elected by the people."

Mr. JARVIS—I accept the amendment; and I would, with the permission of the Convention, strike out the word "however" in the amendment.

The SECRETARY read the amendment as amended as follows:

"All officers elected by the people in any of the cities of this State, shall continue in office until the expiration of their several terms, as now established by law."

Mr. HARRIS—I would suggest to the gentlemen who have proposed these various amendments which have been embodied in the one suggested by the gentleman from New York [Mr. Jarvis] whether or not it is better to admit them now. In every Constitution there is an article, generally called the "schedule," and in our present Constitution there is such an article which provides for all these miscellaneous cases which are but temporary in effect. It is the last article in the Constitution, and in which we shall probably have to provide for cases of this kind, before we finish this Constitution, and these cases should go into that schedule or article at the end of the Constitution, which provides for the manner of its going into effect. It seems to me it would be better than to embody it in this article, which is permanent in its operation.

Mr. OPDYKE—It would be entirely competent for the Committee on Revision to transpose the amendment to the schedule; for myself, I am in favor of the proposed amendment.

Mr. DALY—I was about to make the same observation. I regard the amendment as indispensably necessary, and particularly in reference to the financial officers of the city.

The question was put on the adoption of the amendment offered by Mr. Jarvis, and it was declared carried.

Mr. E. BROOKS—I wish to say a word or two only with regard to the article now under consideration, which I shall follow with a motion to lay on the table. That part of the action of this Convention which is obnoxious to the citizens of the city of New York, is embodied in those two lines, "except for sanitary and police purposes." Under the power which is now to be embodied in the Constitution of this State, and which has never been embodied in any previous Constitution, authority will be given to fasten for all time by constitutional enactment these privileges, or these impositions, I might say rather, upon the city of New York. Now, Mr. President, what is meant by "police purposes?" Police purposes may cover any thing under the sun. "There is no way," it is said, "to judge of the future but by the past," and judging from the past what has been the power exercised in the city of New York in the matter of the police? Take the action of the last Legislature for example. They gave the police power over the licensing of hacks in the city of New York; over the licensing of omnibusses; over all those little affairs which properly belong to the local government; and though it is true that that law was declared to be unconstitutional by the court of appeals, it was an authority so exercised for the time, and it led to a great conflict of opinion in the city of New York, and to a very expensive litigation in that city. This kind of State power was exercised by the Legislature through the police of New York. Take another and more important example, Mr. President, and that is the excise system. All the power which belongs to it is conferred upon the police of the city of New York; and therefore, I say, that under these two powers, the one relating to the sanitary affairs of the city, and the other relating to the police of the city, you may embody every other commission in these two, and have supreme control over the city. Now, sir, as one who wishes well to the final action upon the Constitution, as one who desires to see the language and principles we may put in it adopted by the people, and that no undue prejudices may be awakened against it, I for one, and I believe the great body of my friends concur with me, prefer that the law should remain as it is, and that the Legislature should have the power that they now have, and that these two provisions should be embodied in the fundamental law of the land. Therefore I move to lay this whole subject upon the table, believing that a greater good will result in the end from such a motion than there will from adopting the full section of the article.

Mr. MURPHY—I call for the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. RUMSEY—Is a motion in order to amend that motion?

The PRESIDENT—A motion to lay upon the table cannot be amended or debated.

The question was put on the motion of Mr. E. Brooks, and it was declared lost, by the following vote:

Ayes—Messrs. Alvord, Baker, Bergen, Bick-

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ford, E. Brooks, Cassidy, Comstock, Corning, Daly, Ferry, Garvin, Graves, Gross, Hadley, Hardenburgh, Harris, Hatch, Jarvis, Ketcham, Larremore, A. R. Lawrence, M. H. Lawrence, Livingston, Loew, Masten, Mattice, Morris, Rathbun, Robertson, Roy, S. Townsend, Tucker, Van Campen, Wickham—34.

Noes—Messrs. A. F. Allen, C. L. Allen, Armstrong, Axtell, Beals, Beckwith, Bell, E. P. Brooks, E. A. Brown, W. C. Brown, Case, Cheritree, Clarke, Colahan, Cooke, Corbett, Curtis, Duganne, C. C. Dwight, Ely, Endress, Field, Flagler, Fowler, Francis, Frank, Gould, Hammond, Hand, Hitchcock, Houston, Hutchins, Kinney, Landon, Lapham, A. Lawrence, Lee, McDonald, Murphy, Opdyke, C. E. Parker, Pond, Potter, President, Prindle, Prosser, Reynolds, Root, Rumsey, Schumaker, Seaver, Silvester, Smith, Stratton, M. I. Townsend, Veeder, Verplanck, Wakeman, Wales, Williams—60.

Mr. CURTIS—My friend and colleague from Richmond [Mr. E. Brooks] has stated that the great difficulty in the section is contained in the two lines in the third section as adopted: "And no other local divisions or districts shall be made except for sanitary and police purposes." If there is no further amendment to that section, I have a motion to offer.

The PRESIDENT—Are there amendments to this section? None being offered, the Chair will entertain the motion of the gentleman from Richmond [Mr. Curtis].

Mr. CURTIS—I move that the section be stricken out.

Mr. C. C. DWIGHT—On that motion I move the previous question.

The question was put on the motion of Mr. C. C. Dwight, and it was declared carried.

The question recurred on the motion of Mr. Curtis to strike out the third section.

Mr. McDONALD—I ask for the ayes and noes.

A sufficient number not seconding the call, the ayes and noes were not ordered.

The question was put on the motion of Mr. Curtis to strike out, and it was declared carried.

The SECRETARY proceeded to read the fourth section as follows:

SEC. 4. The common council in New York and Brooklyn and the board of aldermen in other cities, shall possess such powers as may be conferred upon them by the Legislature, but they shall have no executive powers.

Mr. LAPHAM—I move to substitute for that section the second section of the article reported by that portion of the committee represented by Mr. Opdyke. That is a substitute properly following the two already adopted, providing the manner in which the mayor may be removed.

The SECRETARY proceeded to read the substitute offered by Mr. Lapham, as follows:

"Any mayor may be removed by the Governor, but only after due notice and an opportunity of being heard in defense, and for causes to be assigned in the order of removal. In case the office of any mayor shall become vacant before the expiration of the term for which he was elected the Governor shall fill the vacancy until the next annual charter election."

Mr. VERPLANCK—I think this amendment is not germane to the subject under consideration.

The PRESIDENT—The Chair would inform the gentleman that the rule adopted by the Convention is that one amendment must be germane to another, but as to an amendment to the section he must leave it to the Convention to determine for itself whether it would be proper or improper.

Mr. ALVORD—I have been absent and do not know the action of the Convention upon the second section reported by the majority. I wish to say, however, in this connection that gentlemen should pause and reflect before they undertake to make so radical a change as this in the fundamental law of the State. Why, sir, you virtually put the power of the cities of this State in the hands of the Governor. He may get up specious pretexts for the removal of the mayor, and remove him, and you give him, it seems to me, the right and power to put a person in his place until the next election; giving the power to the Governor of the State in this locality to remove the executive of every city of this State.

Mr. CURTIS—I think the gentleman will find in the majority report that that is provided for.

Mr. ALVORD—Not by any means—no, sir. In case the office of any mayor shall become vacant before the expiration of the term for which he was elected, the powers and duties of the office shall devolve upon the presiding officer of the board of aldermen, until the vacancy shall be filled. That is the majority report, sir. It is right and proper, and we agree that the Governor of this State should have the power under certain circumstances of removing the executive heads of cities; but he should not have, it seems to me, the power of putting one of his own creatures in the place of the mayor. It should be given to the local authorities in some way to fill the vacancies; for otherwise you give to the Governor the power to remove executive heads of the different cities of this State, and take the whole control of those cities in his own hands. I trust we are not so anti-republican and anti-democratic as to go to any such extent as this.

The question was put on the substitute offered by Mr. Lapham, and it was declared lost.

Mr. RUMSEY—I move to strike out the fourth section.

The question was put on the motion of Mr. Rumsey, and it was declared carried.

The SECRETARY proceeded to read the fifth section, as follows:

SEC. 5. Every act, ordinance, resolution or proceeding which shall have passed the two boards of the common council of New York or Brooklyn, or the board of aldermen of any other city, shall, before it shall take effect, be presented to the mayor for his approval; if he approve it, he shall sign it; if not, he shall return it to the board in which it originated, with his objections, within ten days, or at the next stated meeting of such board thereafter. Such board, after the expiration of ten days from the time of such return, may proceed to consider such act, ordinance, res-

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olution or proceeding, and if, upon such reconsideration, two-thirds of all the members elected to each board of the common council of New York or Brooklyn, or to the board of aldermen of any other city, shall agree to pass the same—or, if the mayor shall not return any such act, ordinance, resolution or proceeding, within the time above limited for that purpose, it shall take effect as if he had approved it.

Mr. C. C. DWIGHT—Believing, as I do, that this section, as well as very much that follows in this article, is proper matter for legislative cognizance, and such cognizance only, I move to strike out this section.

The PRESIDENT—If there is no motion to amend the section, that proposition will be entertained.

The question was put on the motion offered by Mr. C. C. Dwight to strike out, and it was declared carried.

The SECRETARY then proceeded to read the sixth section, as follows:

SEC. 6. Boards of aldermen and assistant aldermen shall choose their own president and clerk, and such other officers as they may deem necessary.

Mr. CURTIS—I move to strike out this section for the same reason.

The question was put on the motion of Mr. Curtis to strike out, and it was declared carried.

The SECRETAR proceeded to read section 7 as follows:

SEC. 7. The comptroller or chief financial officer and the receiver of taxes and assessments of New York and Brooklyn shall be chosen by the electors of the city. Their respective terms of office shall be three years. They shall appoint all subordinate officers in their respective departments. They may be removed in the same manner as a mayor may be removed by the Governor. In case either of said offices shall become vacant before the expiration of the term for which the officer was elected, such vacancy shall be filled by the Governor until the next city election, except that when the vacancy shall be created by removal, it shall be filled by the board of aldermen.

Mr. CURTIS—We have already provided, in a section already adopted, for the appointment of this chief financial officer; and I believe he is now liable to be removed in the manner provided in another section. I move, therefore, that this section be stricken out.

The question was put on the motion of Mr. Curtis to strike out, and it was declared carried.

The SECRETARY proceeded to read section 8 as follows:

SEC. 8. Heads of departments and officers charged with the administration of departments shall be appointed by the mayor. Subordinate officers of departments shall be appointed by the heads or other officers in charge of such departments. All other executive officers shall be appointed by the mayor. Any officer appointed by the mayor may be removed by him at pleasure. All city officers whose offices may be hereafter created by law, shall be chosen by the electors of the city or some district or division thereof, or appointed by the city authorities, as the Legislature may direct.

Mr. CURTIS—I see that in the second section provision is made that "all city officers for whose election or appointment no provision is made by existing laws, or in this article, shall be elected by the voters of the city at large," etc. I therefore move to strike out this eighth section.

The PRESIDENT—There being no motion to amend, that motion will be entertained.

Mr. DALY—I simply wish to say that this section, as it now stands, embodies exactly what we wish in the city of New York; and we shall regard the vote upon this section as a disposition of the whole subject, and upon this motion I ask the ayes and noes.

A sufficient number seconding the call, the ayes and noes were ordered.

Mr. DUGANNE—I should like to have a division of that question, sir. I am decidedly in favor of the appointment by the mayor of heads of all subordinate departments. I believe that that power should be vested in the mayor, and that we should be rid in the city of New York of the conflict of jurisdiction, the opposition of one department to another, which has been the curse of that city as long as I can remember. I, therefore, Mr. President, would like to see this question divided.

Mr. VEEDER—I rise to a point of order—that the motion to strike out is not divisible.

The PRESIDENT—A motion to strike out and insert is not divisible, but if a motion is made to strike out a section a motion to amend it will take precedence.

Mr. VEEDER — I submit that a motion to strike out a section is not in order until it has been perfected.

The PRESIDENT—The Chair distinctly announced before the motion to strike out was entertained, that he would entertain any motion to amend.

Mr. DUGANNE—Does the Chair rule that I am not in order?

The PRESIDENT—The Chair rules that if the gentleman from Kings desires to offer an amendment to this section, that takes precedence of the motion to strike out.

Mr. VEEDER—I do, sir.

Mr. DUGANNE — Mr. President, I wish to offer an amendment.

The PRESIDENT—The gentleman is too late.

Mr. DUGANNE—I have not yielded the floor.

The PRESIDENT—The Chair understood the gentleman to be speaking on a motion to strike out.

Mr. VEEDER—He asked for a division of that question.

Mr. DUGANNE—I do not think that a motion to amend can be made while I have the floor.

The PRESIDENT—The gentleman from Kings [Mr. Veeder] rose to a point of order, which the Chair decided to be well taken; that is that he had a right to amend this section before it could be stricken out.

Mr. DUGANNE—Had I not a right to propose an amendment?

The PRESIDENT—The gentleman would have had the right if he had exercised it.

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Mr. DUGANNE—I was about to exercise it.

The PRESIDENT—The gentleman from Kings [Mr. Veeder] has exercised it. The proposition of the gentleman from Kings will be received.

Mr. VEEDER—I move to amend this section by striking out, in the eighth and ninth lines, the words "or some district or division thereof." I do not, perhaps, fully understand the intention of the Convention, and perhaps it may be that a majority of this Convention desire to retain this section. If that is true, sir, I think it important that these words should be stricken out, because it will be observed by the Convention that it provides here that city officers, to fill city offices that may be hereafter created by law, shall be chosen by the electors of the city, or some district or division thereof, or appointed. Now, sir, if the Legislature enact a law providing for the election of city officers, this section gives them the power to determine that the electors of a certain portion of the city can choose such city officers, to the exclusion of the electors of the remaining portion of the city, or, in other words, any city officer who may be elected in the city of New York or Brooklyn, or any other city, the Legislature may provide that that city officer may be chosen by a portion of the electors of such city.

Mr. ALVORD—Will the gentleman allow me to ask him a question? If the amendment he proposes should be adopted, is it not clear that the election of our aldermen or common councilmen would have to be by the whole people? In attempting to avoid one error, does he not find himself in a dilemma in the opposite direction? This was intended to allow of the election of an alderman, or common councilman, or other officer, by a single district; and if the amendment is adopted, every officer of the city would have to be elected by the whole city.

Mr. VEEDER—I do not so understand the section, but, on the contrary, the object of my amendment is to provide against the Legislature singling out some district that may be antagonistic to the majority of the city in politics, and providing for the election of city officers by a portion of the electors. We have had instances of that kind. We have had wards divided up, and subdivided, so as to prohibit the electors of the city, or the majority of the people, expressing their choice, and to permitting the minority to elect the officers.

Mr. ALVORD—I do not know, under the rule, that it is germane, but I move to amend the section by striking out all after the word "pleasure" in the sixth line.

The PRESIDENT—The Chair does not think that germane to the motion of the gentleman from Kings [Mr. Veeder].

Mr. DUGANNE—I find in referring to the second section already adopted, a clause providing that "all city officers for whose election or appointment no provision is made by existing laws or in this article, shall be elected by the voters of the city at large, or of some division thereof, or appointed by the mayor with the consent of the board of aldermen, as shall be provided by law," which covers the point. I find that in the other section.

The question was put on the amendment offered by Mr. Veeder, and it was declared lost.

Mr. ALVORD—I move to amend the section by striking out the seventh, eighth, ninth and tenth lines, as follows:

"All city officers whose offices may hereafter be created by law, shall be chosen by the electors of the city or some district or division thereof, or appointed by the city authorities, as the Legislature may direct."

Mr. VEEDER—I call for the ayes and noes.

A sufficient number not seconding the call, the ayes and noes were not ordered.

The question was put on the amendment offered by Mr. Alvord, and it was declared lost.

Mr. COMSTOCK—I move to amend by inserting in line seven after the word "officers" the words "whose election or appointment is not provided for in this article," or so that it will read "all city officers whose election or appointment is not provided for in this article, or whose offices may hereafter be created by law," etc.

The PRESIDENT stated the question to be upon the amendment offered by Mr. Comstock.

Mr. HUTCHINS—I call for the ayes and noes.

A sufficient number not seconding the call, the ayes and noes were not ordered.

The question was put on the amendment offered by Mr. Comstock, and, on a division, it was declared carried, by a vote of 51 to 25.

The question recurred on striking out the section.

Mr. M. I. TOWNSEND—I hope this section will be stricken out. I do not believe in one-man power. I do not admire the system of government adopted in France so eulogized by the gentleman from New York [Mr. Daly] this morning. I do not—

Mr. DALY—I beg to correct the gentleman. I did not eulogize the government of France, and God forbid I ever should eulogize the government of France.

Mr. M. I. TOWNSEND—Well, he admired the government of the city of Paris.

Mr. DALY—I did not eulogize the government of the city of Paris. I merely said that the mayor of Paris had more power than the mayor of New York.

Mr. M. I. TOWNSEND—I wish to speak well of the action of every committee of this Convention; but I wish to say at this time—and I do deliberately say—that this article is drawn with a profound admiration of the government of France, and in sympathy with the idea that the people shall elect one man, and that that one man when elected, shall have absolute power. Now, it may be said that I am doing injustice to the article. The people of France were allowed to elect the present Emperor by popular election. They did so elect him, and from that time the people of France have had no power whatever, and never will have so long as God in his wrath shall spare the life of that man. [Laughter.] I do not believe that it is necessary for the well-being of the cities of this State that the man who happens for the moment to obtain the office of mayor should have the appointment of every officer in the city; and, if he be of a stripe such as a certain man was who held the office of

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mayor in an important city in this State, have the power of selling—I speak advisedly when I say it—have the power of selling every office in the city. This is not my opinion of popular government. I have heard long and most touching sermons upon the right of self-government, and I have heard them preached in the interest of the report of the majority of this committee. But I tell the Convention and the gentlemen who concurred in the report of the majority of this committee, that when you look at the text of the majority report you will find none of the elements of popular government in it, except in so far as gentlemen may believe that the government of France is to-day a strictly popular government. Here are to be mayors who are to hold their office for three years; and they are to appoint every executive officer in the city; they are to appoint all the heads of departments. There is a perfect inconsistency in this section with what we have done already. We have provided that the comptroller of the city who is at the head of the department of finance shall be elected by the electors of the city. How can we adopt in this section a provision that the same officer that we have already decreed shall be elected by the electors of the city, shall be appointed by the mayor of the city? We have a good many cities in this State, and I believe in no city in this State, except, perhaps, in the city of New York, is there any desire that all power shall be intrusted to one man. If this be democracy (for we have heard a great deal about that and democratic government) if this be democracy, then the democratic fathers that I have ever followed, and follow to-day, were not democrats.

Mr. DALY—Will the gentleman allow me to ask him a question? Does his principle change when the Governor is the one man, instead of the mayor?

Mr. M. I. TOWNSEND—Yes—I said yes, but I will say no, for at the instant I did not understand the question. I spoke too quick, as I often do. No, sir, not at all. Why, I refused to intrust the power of appointing the heads of the departments of State to the Governor. And my friend, [Mr. Daly] will remember that when it was proposed in this Convention, in admiration of this same one-man power, to allow the Governor to appoint all the heads of departments in the State, I voted against it; and I am happy to say that the wisdom of this Convention frowned upon it and put the idea down. And when many gentlemen wanted the same exercise of power to be sanctioned in some form, when it was advocated by seven gentlemen in succession before any body else said one word upon the subject, that the Attorney-General must owe his appointment to the Governor, I ventured to stem the flood so far as my feeble efforts could do it, and it turned out that the good sense of the Convention not only would not allow the Governor to appoint the heads of departments, but would not allow him even to appoint the head of the law department, and I trust it will not be done here in this instance.

Mr. AXTELL—I move the previous question.

The question being put on the motion of Mr. Axtell it was declared carried.

The question recurred on striking out the eighth section, upon which the ayes and noes had been ordered.

The SECRETARY proceeded to call the roll.

The name of Mr. Bickford was called.

Mr. BICKFORD—I desire to be excused from voting, having paired off with Mr. Ferry.

There being no objection, the gentleman was excused.

The name of Mr. Conger was called.

Mr. CONGER—I ask to be excused from voting, having paired off with my colleague—an arrangement which is to continue during the whole of the discussion of this article.

There being no objection, the gentleman was excused.

The SECRETARY concluded the call of the roll.

Mr. ROBERTSON—I beg leave to withdraw my vote, as I had forgotten that I had paired off a short time since.

There being no objection, the vote was withdrawn.

The proposition to strike out was then declared carried by the following vote:

Ayes—Messrs. A. F. Allen, C. L. Allen, Alvord, Archer, Armstrong, Axtell, Beckwith, Bell, E. P. Brooks, E. A. Brown, W. C. Brown, Case, Cheritree, Clarke, Corbett, Curtis, Duganne, C. C. Dwight, Ely, Endress, Field, Folger, Fowler, Francis, Frank, Gould, Graves, Hadley, Hammond, Hand, Hitchcock, Houston, Hutchins, Ketcham, Kinney, Landon, Lapham, A. Lawrence, Lee, Miller, Murphy, Opdyke, C. E. Parker, Pond, President, Prindle, Prosser, Reynolds, Root, Rumsey, Schumaker, Seaver, Silvester, Smith, Stratton, M. I. Townsend, Wakeman, Wales, Williams—59.

Noes—Messrs. Barto, Bergen, E. Brooks, Cassidy, Colahan, Comstock, Cooke, Corning, Daly, Flagler, Garvin, Gross, Hale, Hardenburgh, Harris, Larremore, M. H. Lawrence, Livingston, Loew, Masten, Mattice, McDonald, Morris, Potter, Rogers, Roy, S. Townsend, Tucker, Van Campen, Veeder, Verplanck, Wickham—32.

The SECRETARY read the next section as follows:

SEC. 9. Justices of the peace, police justices, and all other justices of inferior courts not of record, shall be elected by the electors of the city or such district or division thereof as shall be prescribed by law. Their term of office shall be four years. Their number and classification may be regulated by law. In case of a vacancy occurring before the expiration of a full term, such vacancy may be filled by election, but only for the residue of the unexpired term. Any such justice may be removed by such court as may be prescribed by law, but only after due notice and an opportunity of being heard in defense, and for causes to be assigned in the order of removal.

Mr. FOLGER—I move to strike out this section.

The PRESIDENT—If no amendment is offered the motion will be entertained.

Mr. FOLGER—If my recollection serves me, the same provision, or a provision tantamount to this, is contained in the article on the judiciary. I think it is amply provided for there.

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Mr. VEEDER—I desire to inquire whether the article on the judiciary was not limited to justices of the peace, and whether it refers to police justices and all other justices of cities?

Mr. FOLGER—My impression is, it covers the case of police justices, justices of the peace, and justices of cities.

The question being put on the motion of Mr. Folger to strike out the section, it was declared carried.

The SECRETARY read the next section, as follows:

SEC. 10. The State, for the purposes of local government, shall be divided into counties, towns, cities and villages, as heretofore, and no other local divisions or districts shall be made, nor shall any territory be annexed to a city, except for the purpose of changing its boundaries. All existing laws inconsistent with the provisions of this section shall become inoperative upon the adoption of this Constitution.

Mr. LAPHAM—I would suggest that it would be best to pass over this, as we have already adopted a section in its place.

The PRESIDENT—The Chair is not aware that the section in this form has been acted upon.

Mr. LAPHAM—This was the section; but it was taken up and modified.

The PRESIDENT—The Chair understood it to be section 10 of the minority report of Mr. Opdyke, of New York.

Mr. LAPHAM—I move to strike out the section.

Mr. VEEDER—I call for the ayes and noes.

The PRESIDENT—Is there any motion to amend the section? No amendment being offered, the question is upon the motion to strike it out.

Mr. COMSTOCK—I hope that motion will not prevail, and that this section will not be stricken out. I think I am not mistaken in saying that no member of this Convention has yet attempted to give a reason why new local divisions of the State should be created. Whatever power we may choose to leave in the Legislature over cities—in whatever manner we think cities should be governed—no reason has yet been given by any one why new civil divisions of the State should be created, and we all know how it may be liable to great abuses. I hope the section, therefore, will not be stricken out.

Mr. M. I. TOWNSEND—I hope the section will be stricken out for this reason, if for no other. It is utterly impracticable to carry on the State government as it has been been carried on, irrespective of matters to which certain gentlemen object during the discussion, if this section is retained. The adoption of this section would prevent the creation of a ward in a village or a city. It would be impossible to have trustees of villages, or aldermen or assistant aldermen of cities, elected by local divisions in the cities The whole idea of village and city government must necessarily be overturned here, and all the officers would have to be elected by the entire village or city. There is another thing. A part of the government of this State is by school-districts. They have the power of taxation, which is an important function of government; and this would prevent entirely the creation of a school-district, with the right to exercise any power in governing the State. Governmental powers are also exercised by road districts, and a great variety of other districts. I repeat, this section is fraught with evil from beginning to end.

Mr. AXTELL—As no argument has been introduced and no reason has been "attempted to" be given why such districts should be created, as the gentleman from Onondaga [Mr. Comstock] has intimated, I think it would be useless to attempt further argument, at this stage of the proceedings at any rate, and I therefore move the previous question.

The question being put on the motion of Mr. Axtell, it was declared carried.

The question being put on seconding the demand by Mr. Veeder, for the ayes and noes, a sufficient number seconded the call, and they were ordered.

The question was then put on the motion of Mr. Lapham to strike out the section.

The SECRETARY proceeded to call the roll.

The name of Mr. Bickford was called.

Mr. BICKFORD—I desire to be excused, having paired.

There being no objection, the gentleman was excused.

The SECRETARY concluded the call of the roll on the motion to strike out the section, and it was declared carried by the following vote:

Ayes—Messrs. A. F. Allen, C. L. Allen, Archer, Armstrong, Axtell, Beckwith, Bell, E. P. Brooks, E. A. Brown, W. C. Brown, Case, Cheritree, Clarke, Corbett, Curtis, Duganne, C. C. Dwight, Ely, Endress, Field, Flagler, Folger, Fowler, Francis, Frank, Gould, Hadley, Hale, Hammond, Hand, Hitchcock, Houston, Hutchins, Ketchum, Kinney, Landon, Lapham, A. Lawrence, Lee, McDonald, Miller, Opdyke, C. E. Parker, Pond, President, Prindle, Prosser, Reynolds, Root, Rumsey, Seaver, Silvester, Smith, Stratton, M. I. Townsend, Wakeman, Williams—57.

Noes—Messrs. Alvord, Baker, Barto, Bergen, E. Brooks, Cassidy, Colahan, Comstock, Cooke, Corning, Daly, Garvin, Graves, Gross, Harris, Hatch, Larremore, M. H. Lawrence, Livingston, Loew, Masten, Mattice, Morris, Murphy, Potter, Rogers, Roy, Schumaker, S. Townsend, Tucker, Van Campen, Veeder, Verplanck, Wales, Wickham—35.

The SECRETARY read the eleventh section, as follows:

SEC. 11. The Legislature, at its first session after the adoption of this Constitution, shall pass such laws as may be necessary to give effect to the provisions of this article. General laws shall also be passed for the organization and government of cities, and no special act shall be passed except in cases where, in the judgment of the Legislature, the object of such act cannot be attained under general laws.

No amendments being offered, the SECRETARY read the twelfth section, as follows:

SEC. 12 The board of supervisors of New York is abolished, and the duties of such board shall be performed by the mayor and common council, as the Legislature may direct.

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Mr. ALVORD—Gentlemen by turning to the article on the powers and duties of the Legislature, will find that we have provided that a board of supervisors shall be elected in each of the counties of the State, except in the city and county of New York. That provision renders this entirely unnecessary, and I move that it be stricken out.

Mr. OPDYKE—I believe, sir, that under that provision of the Constitution the Legislature would have the right to create a board of supervisors in the county of New York. Experience has shown that that board is altogether unnecessary, and that it adds greatly to the expenses of the city. I think, therefore, that we had better declare constitutionally, that the board is abolished, because all parties are satisfied that its services are unnecessary, and that it adds greatly to the cost of our local government. I hope, therefore, that the motion to strike out the section under consideration will not prevail.

Mr. GARVIN—I am entirely opposed to the section remaining in this article. I concur entirely with the gentleman from Onondaga [Mr. Alvord] in the motion which he makes to strike it out. I am a little surprised that my friend from New York [Mr. Opdyke], whom I esteem very highly, should take the position he does in reference to this particular section, for he himself must well recollect that in the darkest period of the war, immediately after the riots in our city, when the flag of our country was trailing in the dust, and we were looking around to find an organization that would best promote the great object we had in view to put men into the field for the purpose of putting down the rebellion, he most anxiously consulted not only with his own political friends but also with those who are associated with me, as to the best mode in which that could be done. We found ourselves hampered in every direction. We had no act of the Legislature, we had no general power or authority in the city or county of New York by which we could act, and we found it a most difficult thing to obtain volunteers at that time. The board of supervisors was fixed upon as the best organization that could be selected for the purpose of effectuating the object we had in view. They assembled, a committee was appointed, of which my friend, being then mayor of the city, was made an honorary member, and an ordinance which was drawn in the office which I then occupied, by the present able and popular city chamberlain, was passed and put into effect, without the shadow of justification in law; and under that ordinance nine millions of dollars were raised, and one hundred and sixteen thousand men put in the field; and all that was done not only with the approbation of my friend the then mayor [Mr. Opdyke], but by his most vigorous, strenuous and energetic efforts. Associated with him was one whose name every gentleman in this Convention will recollect—our old friend Elijah F. Purdy—now gone to his long and, I trust, happy account. With him also were associated William M. Tweed, Orison Blunt and Comptroller Brennan. Mr. Tweed is now a member of the Senate of this State, elected by a majority of twelve to fifteen thousand votes over his republican competitors. These were the men who were on the committee associated with my friend from New York [Mr. Opdyke]. These were the men that put those soldiers into the field. These were the men that in that way aided the loyal forces of our country in putting down that rebellion against the best government on the face of the earth. And now when we are here for the purpose of making an organic law it is proposed to strike this organization, this board of supervisors, out of existence. Why should it be done? What do we propose to put in place of it? By this very section they propose to confer the powers of the board upon the board of aldermen. Why confer county powers on city officers? Why put all the county property, which my friend knows to be large, in the city of New York, and all the county interests into the hands of the board of aldermen, whose particular and proper duties are to administer the affairs of the city and nothing more? Under this provision they will be meeting one hour as a board of aldermen, and the next hour as a board of supervisors, the same men mixing city and county matters together and turning them over and over. Why, sir, one of the principal theories of our system of government is a division of responsibility and power. Let there be two boards. Let one take care of the county interests, and the other take care of the city interests. Thus the danger of confusion is avoided. I hope and trust this section will be stricken out, not only for the reason suggested by my friend from Onondaga [Mr. Alvord] that it has been already passed upon, but because this board of supervisors should remain. If the Legislature at any time see fit to abolish the board of supervisors, and it turns out that its abolition does not work well, and that it is necessary that they should be restored, it can be done. But if you insert a provision in the Constitution saying that there shall be no board of supervisors in the city and county of New York, and if this Constitution be adopted, for twenty years to come, you cannot have a board of this description in that county, no matter what exigency may arise. I trust, Mr. President, that whatever gentlemen may have done in reference to commissions, whatever they may do in reference to sanitary matters, whether you leave these subjects in the hands of the Legislature as now or not, you will leave to us this organization. I know we are in the hands of our adversaries, and if we are to be deprived of all our rights, we shall retire fighting to the end; we have been here together for more than six months, and we understand each other, and I trust that gentlemen will not deny us this one of our just rights. Let us have this if you give us nothing else.

Mr. M. I. TOWNSEND—Will the gentleman yield a moment?

Mr. GARVIN—I say to my friend from Troy [Mr. M. I. Townsend], whom I have known for many years, that I now resign the floor to him, because I know that he must make a speech or die. [Laughter].

Mr. M. I. TOWNSEND—I asked the gentleman to yield, not that I might make a speech,

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but simply to ask a question. I want to know if this Tweed that he speaks of is the same one that we read of in the newspapers? [Laughter.]

Mr. GARVIN—Mr. Tweed is a man who was loyal during the war, a man who went for the gentleman's [Mr. M. I. Townsend's] idea of putting down the rebellion, and he is the same man that "we read of in the newspapers," a man who submitted his claims to the people of his district, and who was elected by a majority of twelve thousand. I want to know if the gentleman from Rensselaer [Mr. M. I. Townsend] was ever elected by such a majority as that?

Mr. M. I. TOWNSEND—I am answered. I never ran but once.

Mr. GARVIN—And never will again. [Laughter.]

Mr. OPDYKE—As my esteemed friend from New York [Mr. Garvin] has made personal allusions to myself, I hope the Chair and the Convention will indulge me while I say a few words in reply. In the first place, sir, it affords me great pleasure to confirm what the gentleman has said of the action of the board of supervisors of New York during the trying period of the war; and I concur in his marked commendation of the late Elijah F. Purdy, whose co-operation I requested and received at that time. The first action that the board of supervisors took after the riot was to take in hand a matter that the common council had acted upon in a manner which I had failed to approve. The common council had proposed to appropriate three millions of dollars of the funds of the city to pay the commutation of drafted men, which would have prevented the government from getting any men from the city of New York under that draft. As I have said, I did not approve of that measure. The board of supervisors, under the leadership of Mr. Purdy, took the matter in hand, and by the expenditure of a little over half a million dollars, satisfied all the requirements of the draft, and gave the United States government two thousand men, thus saving to the city two millions and a half of dollars by a single act, saving, at the same time, the honor of the city, and strengthening the hands of the government. That system the board of supervisors continued, with great fidelity and usefulness to the city, and, in my judgment, they saved the city and county not less than ten millions of dollars during the war. This much is due in acknowledgement of the services of that board. I wish that I could approve of all the things they have done, but I think they have, like some other men in office, sometimes departed widely from the public interests. However, I shall not refer to such matters now. But I will say here that whatever of personal virtues and aptitude for business they may possess, will be very likely to be transferred to the other Legislative body of the city, and that we shall then have the use of their services still. What I am opposed to is in having two independent legislative bodies, whose jurisdictions are co-extensive, the boundaries of the county and the boundaries of the city being identical. It is only since the year 1857 that we have had more than one local legislative authority to govern that territory. Prior to that time, the duties pertaining to the county organization were performed by the mayor, recorder and board of aldermen. Those duties can be performed in that way still, and I think they had better be thus performed. My friend appeals to us, saying that we have stricken down every other right appertaining to the city of New York, and that we must not take from it this also. So far as regards the board of supervisors, we stand politically upon equal ground. It is a non-partisan body, made up of half of one party and half of the other, and none of my democratic colleagues have objected to the board on that ground. While I am willing to do all justice to the board of supervisors, the question for us to decide is, whether the city will be governed better without it than with it, and on that point I have not the slightest doubt.

Mr. S. TOWNSEND—Admitting, sir, that the rural population of the island of New York is almost entirely absorbed by the power of the municipality of the city, I still am in favor of retaining in our Constitution a recognition of the board of supervisors. I am in favor of it on general principles. Why should the county of New York be made an exception? There are some seventeen other counties that have cities in them, as well as the county of New York, though perhaps not so large cities. Why, I ask, should that county be made an exception? Besides, there may be times, as the gentleman from New York [Mr. Garvin] has very well illustrated, when a conservative body might come in with their assistance and do a great deal of good by assuming, or at least sharing, a grave responsibility with other powers within the county. Again, sir, in the changes and revolutions that may take place hereafter—an event of this kind may occur—a better tone of sentiment may exist in the State as to the propriety of leaving matters that are strictly local with the localities, and thereby the duties of the State Legislature may be greatly lessened. Then, perhaps, a deputation may be sent from each board of supervisors to transact what little business there will remain for the Legislature, especially if we adopt that great, salutary, restraining principle, as a check upon careless legislation, of the Constitution of 1777, and make the Senate a board of council and revision, and thus have really but one purely legislative body, and that drawn from boards exercising subordinate but analogous powes in the counties. But, sir, however that may be, on general principles, I object to this change. I object to singling out the county of New York from the other counties of the State, and making it an exception. I had frequent occasion, years ago, when I partly represented the city of New York in the Legislature, to complain even then, and at times, of my own political friends, that demands were made for special and exceptional acts in reference to the city of New York. I told those who sought those acts then, that they would be returned on them at some time with interest. The people of that city have now to come up here, from year to year, begging the Legislature that they may be permitted to tax themselves. The comptroller of New York city is now in Albany on a humiliating mission of this nature. Sir, that is all wrong; it is contrary to the principles of our government. Some gentle-

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men give as a reason for this exceptional legislation that the population of that city is exceptional; that it has a greater proportion of ignorance and crime than other parts of the State. Sir, we hear very little said here about the intelligence, very little about the virtue, of the city of New York. We have had very little said about the fact (it was only alluded to by Mr. Develin last evening that some of the incipient steps of the Revolution took place in the city of New York; and as allusion has been made to the throwing overboard of the tea in Boston harbor, if the gentleman will look at the history of these States they will find that Captain Sears led a party which threw overboard tea in the harbor of New York, even at an earlier period than it was done in Boston. They will find, too, the fact that when the Asia man-of-war "fired upon the town" it was because the people were spiking the guns upon the Battery in anticipation of the events that were soon to come. As almost a native of New York, all my family, except myself, having been born there, and it is the city of my adoption since three or four weeks from my nativity, and having thus adopted it, as my native place (laughter), I claim that it had a great deal to do with the creation of our national existence, and that it was most potential in reference to matters connected with our State government. Some gentlemen here may not be aware of another fact connected with our revolutionary history, which I, in the course of reading, have discovered — that the men who were nominated and selected in the city of New York to go to Philadelphia at the time the Declaration of Independence was made were instructed to make that Declaration. The men that were first selected were required by the people to pledge themselves to do that. They threw themselves on their reserved rights and said "no," we will not go under any pledge. So the people of New York city named other gentlemen, and the signers of the Declaration of Independence from the colony of New York were the delegates chosen on the second occasion, and at the instance of that city alone. But, sir, I will not go any further into the history of that city at this time, except to assert her leading position in the events of those stirring days. To return briefly to the matter of the relative morality of cities. My respected friend from Rensselaer [Mr. M. I. Townsend] has stated here that the intrusion of the "roughs" of New York into the city of Troy was one of the causes for the creation of the capital police.

The PRESIDENT—Will the gentleman from Queens [Mr. S. Townsend] pardon the Chair for saying that he thinks the gentleman is slightly wandering? [Laughter.]

Mr. S. TOWNSEND—Well, sir, allow me to finish the sentence. I wish to say to my friend that the idea of "roughs" (in politics) was first suggested by the pipe-layers of Philadelphia, and who defeated my own election in 1838, by an "intrusion" as passengers, on Captain Schultz's Amboy steamer, of some four hundred ruffians, who, under the management of corrupt leading whig politicians, some of whom are living to-day —I trust to regret their connection with the matter—(which periled in 1840 their personal liberty, in the nearly successful effort that was made by the courts of New York city to bring the rigor of our statutes to bear upon them)— were then made to "vote early and often," and at as many polls as possible, and to thus defeat the admitted democratic majority of the city.

Mr. ALVORD—I made the motion to strike out for the reason that this is only repeating what we have already done. If gentlemen will look at document No. 83, on the report of the committee on town officers, etc., adopted and sent to the Committee on Revision, they will find in section 3 a provision that, "there shall be in each of the counties of this State, except New York, a board of supervisors, elected," etc. That is why I have made this motion. I wish to say a few words—

Mr. GRAVES—Will the gentleman allow me to ask him a question?

Mr. ALVORD—Yes, sir.

Mr. GRAVES—You have provided for the establishment of a board of supervisors in each county of the State, except New York?

Mr. ALVORD—Yes, sir.

Mr. GRAVES—Now, what body have you clothed with the powers that were formerly exercised by the board of supervisors in New York?

Mr. ALVORD—That subject is left to the Legislature. I desire to say in this connection that I wish it to be understood that, I have made this motion, not because I am in favor of the view of the gentleman in front of me [Mr. Garvin], but because I believe this board to be entirely unnecessary.

Mr. M. I. TOWNSEND—Will my friend from Onondaga allow me to ask him a question?

Mr. ALVORD—I will, sir.

Mr. M. I. TOWNSEND—The article to which the gentleman refers as adopted by the Convention, does not prohibit a board of supervisors in the city of New York, but simply provides for the creation of such boards in other counties. Now, may it not be construed by the courts, that, the board of supervisors being already in existence in the county of New York, it will stand and continue, and is not constitutionalized out of existence by that article?

Mr. ALVORD—I have no fear at all in that regard. I want to know if the present boards of supervisors in the other counties of this State are recognized by the present Constitution. They are simply the result of legislative enactments. We go on here and specify in terms that hereafter so far as regards that particular class of local officers, they shall exist in each county of the State except the county of New York; and therefore, in that exception, we prohibit the existence of a board of supervisors in the county of New York, and by no possibility can the Legislature create such a board there unless we strike out that exception.

Mr. AXTELL—I move the previous question.

The question was put on the motion of Mr. Axtell for the previous question, and it was declared carried.

The question was then put on the motion of Mr. Alvord, to strike out the twelfth section, and it was declared carried.

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The SECRETARY read the thirteenth section, as follows:

SEC. 13. All city elections shall be held on the second Tuesday in April, and the official year shall begin on the first day of May.

Mr. AXTELL—I move to strike out this section.

The question was put on the motion of Mr. Axtell, and it was declared carried.

The SECRETARY read the fourteenth section as follows:

SEC. 14. The Legislature, at its first session after the adoption of this Constitution, shall provide for the appointment of three commissioners, whose duty it shall be to reduce into a systematic code, the laws of this State, relating to the government of cities, with such alterations and amendments thereto as to them shall seem practicable and expedient. They shall report their proceedings to the Legislature for its action thereon.

Mr. RUMSEY—I am against putting commissions into the Constitution in any form. I therefore move to strike out that section.

Mr. COMSTOCK—I hope that section will not be stricken out, because I think it a very useful section to retain. There is nothing that so much needs codifying and revising as the laws of our State in regard to the charters of cities. If any one will look over a volume of the Session Laws he will find that it is at least half filled with city and village charters and amendments of them. Special laws of this kind fill the volumes of our legislation. I think that great body of special laws may be reduced into some uniform code, which will simplify it, and which will prevent much special legislation hereafter. Under this impression I incline to hope that this section may be retained.

Mr. POND—I would like to inquire of the gentleman from Onondaga [Mr. Comstock] whether if this section is retained this commission may not make alterations in the government of cities, and the Legislature have authority to adopt them, although not consistent with this Constitution?

Mr. COMSTOCK—No; the work must be done within the Constitution.

Mr. POND—The section does not say so.

Mr. COMSTOCK—No matter, it need not say so. Of course the commissions must act within the Constitution.

Mr. LAPHAM—I am in favor of striking this out for two reasons. In the first place, we have provided in section 11 for the passage of general laws for the organization of city governments, and have provided that no special legislation shall be had, except where, in the opinion of the Legislature, the object cannot be attained by general laws. This contemplates a reorganization of the laws in relation to cities. The commission provided by this section is wholly unnecessary, and it would involve a vast expense to the State, because within the scope of the section are all the charters of the various cities of the State and all the special acts amendatory of those charters, which necessarily would be included within the codification that is here provided for, and the amount of matter that would enter into this code of laws would be larger, much larger, than that which enters into the code which was made by the commission appointed some years ago to codify the general statutes of the State. For these reasons I am opposed to any such provision as this, and I hope the section will be stricken out.

Mr. CURTIS—It does not seem to me a matter of very great importance, but it is clear that this section is mandatory, and that the work which is sought to be done by this commission will be of undoubted value to the State. I trust, therefore, that the section will be retained.

Mr. FRANCIS—I move as an amendment to the section the language of the Constitution of 1846, eighth article, section 9—"It shall be the duty of the Legislature to provide for the organization of cities and to restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent abuses in assessments and in contracting debts by such municipal corporations."

Mr. COMSTOCK—I do not think that that amendment is germane to this section.

The PRESIDENT—The Chair will inform the gentleman from Onondaga that under the rule adopted by the Convention, it is simply required that one amendment shall be germane to another amendment.

Mr. E. BROOKS—I suggest to the gentleman from Rensselaer [Mr. Francis] that his amendment would be more appropriate to the fifteenth than to the fourteenth section.

The question was put on the amendment of Mr. Francis and it was declared lost.

Mr. AXTELL—I move the previous question on the motion of the gentleman from Steuben [Mr. Rumsey] to strike out the section.

The question was put on the motion of Mr. Axtell for the previous question, and it was declared carried.

The question was then put on the motion of Mr. Rumsey to strike out the fourteenth section, and, on a division, it was declared carried, ayes 47, noes 28.

Mr. FRANCIS—Would it be in order to move an amendment to the fifteenth section such as I moved to the fourteenth section?

The PRESIDENT—It will be in order after the Secretary shall have read the fifteenth section.

The SECRETARY read the fifteenth section, as follows:

SEC. 15. Every city shall determine the amount to be raised by tax therein for city purposes, including police and sanitary expenses, but no money shall be so raised for any purpose not previously authorized by law.

Mr. FRANCIS—I move as a substitute for this section the provision of the Constitution of 1846 which I have already indicated, and which is as follows:

"It shall be the duty of the Legislature to provide for the organization of cities, and to restrict their power of taxation, assessment, borrowing money, contracting debts and loaning their credit, so as to prevent abuses in assessments, and in contracting debts by such municipal corporations."

Mr. VEEDER—I rise to a point of order.

The PRESIDENT—The gentleman will state his point of order.

Mr. VEEDER—This subject-matter has been

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submitted to the Convention already, and voted upon, and the only way that the gentleman can reach it is by a motion to reconsider.

The PRESIDENT—The Chair understands the gentleman from Rensselaer, to offer this as a substitute for the fifteenth section.

Mr. VEEDER—He offered the same proposition as an amendment to another section; and if a proposition can be offered in this Convention as an amendment to one section and then be renewed as an amendment to every other section as it comes up, I desire to know that fact. I desire to know if it is parliamentary. A ruling has been had the other way heretofore, and I simply desire to know what is the ruling now.

Mr. FRANCIS—The chief objection, as I understand it, to the amendment offered by me to the fourteenth section, was that it was not germane to that section—that I did not offer it in the proper place.

The PRESIDENT—The Chair thinks that the proposition of the gentleman from Rensselaer, to strike out the fifteenth section, and to insert new matter in its place, is a different proposition from a proposition to amend another section. The motion of the gentleman from Rensselaer, now, is to strike out one thing and to insert another in its stead; and that was not his former motion.

Mr. MURPHY—The substitute or section which is proposed by the gentleman from Rensselaer [Mr. Francis] is identical with the provision in the present Constitution. Having been the author of that provision in the existing Constitution, I beg to say something in reference to it, and to state the reason why I shall vote against the amendment of the gentleman from Rensselaer. In the Convention of 1846 a struggle was made in vain to incorporate into that instrument a requirement that there should be an organization of cities by general law. Public opinion was not then ripe for such a provision, and after discussing the subject, the Convention finally determined that they would pass it over, but, in order to do something, they recommended to the Legislature the adoption of the section as it is. Now there are two objections to re-incorporating it in the proposed Constitution as suggested by the gentleman from Rensselaer [Mr. Francis]. The first is that we have already provided in the Constitution for the organization of cities by general law; and the other is, that although this provision has now been in our Constitution for twenty years, the Legislature have altogether failed to act under it, looking upon it as an instruction, and not a mandate; and if you adopt it here now, there will be no further action upon it than heretofore. I am opposed to striking out the section as reported by the majority of the committee. The Convention are undoubtedly aware that under the existing law all the cities of the State, with the exception of the city of New York, determine the amount of money which they want for city purposes. The Legislature, by general enactment, has provided for the circumstances of the different cities of the State with the exception of the city of New York. That city has been an exception from the foundation of the government, and when it did not contain more than 20,000 or 30,000 inhabitants the same rule prevailed in regard to it that prevails now. It is not because the city of New York is so large and has such great interests, that the rule has been continued requiring that it shall come to the Legislature every year for the passage of a tax levy; but that rule has been continued in pursuance of an old custom—there being no power in the old charter of the city. Now, there is no more necessity that the city of New York should submit to the inconvenience of going annually to the Legislature, than that any other city of a like, or a large population should do so. I have seen in my experience that this rule is a source of great wrong and injury to the city of New York. The corporate authorities there make up their estimate of what is necessary for the purpose of carrying on the city government; and I believe that as a general rule those estimates have been fairly and judiciously made. But it is requisite that the estimate shall be brought up to the Legislature and passed upon there, before the tax can be levied. What is the consequence? When the estimate gets to Albany other interests come in, and appropriations for other objects than those contemplated by the authorities are put in, sometimes for large sums; and the strife as has almost uniformly for the last six years arisen from this bill in the Legislature, is absolutely frightful. I do not see, Mr. President why we might not leave to the city of New York, under a legislative provision, or a constitutional provision, if you please, the entire question of determining how much money is needed for its own purposes. Of course they cannot appropriate or spend under this section any moneys except such as shall be previously authorized by enactments of the Legislature. I hope, therefore, that the section will be retained, and that the amendment of the gentleman from Rensselaer [Mr. Francis] will not be adopted.

Mr. FRANCIS—I support this substitute because it is a declaration of a just constitutional policy which provides for the organization of cities, and which proposes to restrict their power of taxation, assessments, etc. My objection to the fifteenth section, as reported by the committee, is that it places those great interests of police and sanitary organization completely under the control of the municipal authorities in the mattert of voting appropriations for their support—that it places the boards in the hands of this municipal power, so that it may impair and utterly destroy their efficiency. The section reported by the committee seems to me to be entirely in conflict with the principles and policy which have been supported by the votes of this Convention; whereas the proposition I have submitted as a substitute is the announcement of a correct and proper principle and policy, and I think may rightly have a place in the Constitution.

Mr. OPDYKE—I hope the substitute offered by my friend from Rensselaer [Mr. Francis] with slight amendment, will be adopted. I rise to propose one amendment and to suggest another. I move to insert after the word "provide" these words "by general laws, as provided for in this article;" so that it will read, "it shall be the duty of the Legislature to provide by general laws, as provided for in this article, for the organization of cities," etc.

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Mr. FRANCIS—I accept that amendment.

Mr. OPDYKE—I offer that amendment in the hope of getting rid of much of this special legislation to which we in the city of New York have been subjected, and which has often been of an injurious character. That having been accepted, I now propose another; to add at the end of the substitute the following: "The Legislature shall not have power to make additions to the tax levies of cities." We have found in the city of New York from year to year a growing disposition in the Legislature to make large additions to our tax levies, additions, many of which where unnecessary, injudicious and improper. I am willing the Legislature should have power to correct and reduce whenever they find improper items in the tax levy, but I am utterly opposed to giving them any power to make additions. It is to be presumed that the local authorities know what they need and will put in all that is necessary. It is possible and even probable that they will put in some things that should not be there and I would give the Legislature power to strike those things out; but I can see no propriety in giving them power to make additions to the tax levy.

Mr. FRANCIS—I accept that amendment.

Mr. DUGANNE—I am very glad that the gentleman has offered that amendment. I had already prepared something of that kind the final clause of which I should like to have adopted as an amendment to the gentleman's proposition. I would like to amend by adding at the end of the amendment of the gentleman [Mr. Opdyke] the words, "without consent of the proper authorities." On further consideration and from the suggestion of my friend from New York [Mr. Opdyke], I withdraw my amendment.

Mr. MURPHY—The objection to this amendment is that it is destroying the taxing power of the State in regard to cities. It is an actual prohibition of the taxing power of the State to do any thing except what the local authorities of cities consent to.

Mr. AXTELL—I call for the reading of the amendment of the gentleman from Rensselaer [Mr. Francis].

The SECRETARY read the amendment as follows:

"It shall be the duty of the Legislature to provide for the organization of cities, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debts by such municipal corporations: but the Legislature shall not have power to make additions to the tax levies of cities."

Mr. AXTELL—I move the previous question on the section.

Mr. ALVORD—I hope not. It seems to me that the gentleman from Clinton [Mr. Axtell] stands there in his place, keeping the floor for the purpose of moving the previous question upon every thing.

Mr. AXTELL—I withdraw my motion for the previous question. I rise to a question of privilege. I believe I have not trespassed upon the rights of any gentleman upon this floor, and I think the remark of the gentleman from Onondaga [Mr. Alvord] is entirely uncalled for.

Mr. ALVORD—It is a question between the gentleman and me. I say that he has been standing upon the floor for the last half hour waiting to make this motion.

Mr. LANDON—I rise to a question of order. The remarks of the gentleman from Onondaga [Mr. Alvord] are not germane to any pending question.

Mr. ALVORD—I desire to say a few words upon the question which is now before the Convention. One of the grievances complained of by the people of the city of New York—and it is a very great grievance, so far as they are concerned, and a very great burden upon the Legislature—is the necessity of their annual tax levy coming up here for the purpose of being passed upon by the Legislature. There is no other city in the State that has to come up to the Legislature to have its annual tax levy approved, and this rule in regard to the city of New York has given rise to very great abuses. Parties opposed to some items in the tax levy that were really necessary have come up from the city, and succeeded in getting members of the Legislature to strike them out. Now, if we make general laws authorizing the Legislature to interfere with unnecessary and unlawful taxation, we should stop there. We should say in specific terms to every one of the cities of the State that they shall be treated as a whole by general laws in regard to this matter, and that the Legislature shall not undertake to interfere. The original proposition of the Committee on Cities was to do away with this matter of the city of New York coming up here with this annual tax levy. I have no objection to the amendment of the gentleman from Rensselaer [Mr. Francis], or to the amendment of the gentleman from New York [Mr. Opdyke], if he will go a little further, and not only prohibit the Legislature from adding to the tax levies of cities, but prohibit them from having any thing to do with the tax after it shall have been levied. Let us have a general law under which cities can regulate this matter themselves, and then if they violate the general law, let the matter be so fixed that the citizens can go into the courts to have it regulated. Let us do away with this coming up here to the Legislature with the tax levy after it has been passed upon by the local authorities of the city. I trust, sir, that this discrimination which has obtained in the past, so far as regards the city of New York, will not be continued under any constitutional provision which we may make on the subject, and I trust, therefore, the gentleman from New York will withdraw his amendment, and will agree to this one which I suggest: "But the Legislature shall not have power to alter a tax levy made in pursuance of general laws."

Mr. AXTELL—I rise to a personal explanation. The gentleman from Onondaga [Mr. Alvord] says that I have been standing upon the floor for the last half hour ready to move the previous question. Sir, I had been standing upon the floor for a few minutes, before I made that motion; and I will say to that gentleman through the Chair, if the Chair please, that I sometimes am compelled to stand upon the floor from the fact that I can-

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not sit very long in one position. Inasmuch as it seems to hurt the gentleman's feelings to see me standing upon the floor, I think it is due to him that he should know this fact. I yield to the gentleman from Ontario [Mr. Folger].

Mr. FOLGER—I wish to ask the gentleman from Rensselaer [Mr. Francis] why he leaves out the words "incorporated villages" from this amendment?

Mr. FRANCIS—At the suggestion of others, and because we are dealing with city matters.

Mr. FOLGER—It is quite as important, I think, there should be a general law for incorporated villages also.

Mr. DALY—In consequence of provisions in the old charters of the city of New York, it was thought at an earlier period that it was a doubtful matter under these charters, whether the city could lawfully impose a tax without the sanction of the Legislature, and so the practice has arisen of coming to the Legislature every year for this authority. The trouble now is, that, the practice having been established, all taxation to be imposed for the expenses of the city of New York has to go through the ordeal of the Legislature, and the Legislature may and do add to or take from the estimates of the local authorities. The amendment of the gentleman from Onondaga [Mr. Alvord] provides for this, and recognizes in that locality what is recognized in every other county in the State, that those who have to pay the taxes should regulate the raising of them, that that power should not be transferred from the locality to the central power of the State. In this particular, as in others, the city of New York is treated as an exception, and if, the amendment of the gentleman from Onondaga [Mr. Alvord] should be adopted, then this consistent principle would be recognized and fixed by it, that, as the city of New York, for all the purposes of its local government, has to pay for that government, it, and not the State, ought to determine what sum of money shall be raised for such purposes, and how that money shall be applied. That is done now in every other county in the State, and there is no reason why there should be an exception made in respect to the city of New York.

Mr. W. C. BROWN—I hope this amendment will not prevail. If I understand it rightly it will require the Legislature of the State, the first year after the adoption of this Constitution, to pass a general code of law which shall, in and of itself, constitute the charter of every city now existing, and of every one that shall be organized hereafter; and there can be no special laws applicable to particular cities, and such as are required by the peculiar circumstances of particular cities. It seems to me that that plan is utterly impracticable. It is utterly impracticable for any legislature to devise a code which shall be applicable to the city of New York and at the same time shall constitute a proper charter for the city of Troy or the city of Oswego. In fact, I deem it utterly impracticable to make a charter that shall be a proper and sufficient charter for any two cities in the State; and if any gentleman here thinks that it is practicable I would remind him that the Legislature can attempt it and can do it without this constitutional provision; but my word for it, if they do, they will repeal the act by which they do it within a year. I hope that, by the rejection of this and the other amendments on the subject now before the Convention, the Legislature may be left to pass charters for particular cities, with reference to their particular local wants, and that there will be no attempt made to fix upon one city a charter that is fit only for another.

Mr. POND—This question that is now before us substantially involves two—one the striking out of the fifteenth section, and the other the adoption of the amendment proposed by the gentleman from Rensselaer [Mr. Francis]. Is the question capable of division?

The PRESIDENT—A motion to strike out and insert is indivisible.

Mr. E. BROOKS—I ask leave to make a motion in the interest of the business of the Convention, and it is that before taking a recess to-day we proceed to finish the article under consideration.

The PRESIDENT—If there be no objection, that motion will be entertained.

The question was put on the motion of Mr. E. Brooks, and it was declared carried.

Mr. ALVORD—Do I understand the Chair that that motion is adopted?

The PRESIDENT—The Chair heard no objection.

Mr. ALVORD—I have been without my breakfast this morning, and I take dinner at two o'clock. I object. [Laughter.]

The PRESIDENT—The objection comes too late.

Mr. POND—It strikes me that this section 15 ought to be struck out or amended. It seems to have been framed upon the original plan of the committee, which plan has been entirely changed by the Convention, and it includes the power on the part of the State to determine the amount to be raised by tax for city purposes of every kind, including police and sanitary purposes. Now, it is very clear that, if this power be conferred upon the city authorities, they will be able to nullify entirely any police or sanitary law that the State may provide for the city. I therefore think that the section ought to be struck out entirely. So far as general laws are concerned, we have already provided for that, as far as it can be reached, in the eleventh section, which has been adopted. I hope, therefore, that whether the amendment of the gentleman from Rensselaer [Mr. Francis] shall be adopted or not, this section 15 will be struck out, unless it is amended by striking out the words which include expenses for police and sanitary purposes. It seems to me that the whole section had better be stricken out, and the power left with the Legislature to regulate this subject according to what they may deem expedient.

Mr. VEEDER—There being no limit fixed for this debate, I move that the Convention do now adjourn.

The question was put on the motion of Mr. Veeder to adjourn, and it was declared lost.

The question was then put on the motion of Mr. Francis to strike out and substitute, and it was declared lost.

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Mr. RUMSEY—Now, sir, I move to strike out the section.

The question was put on the motion of Mr. Rumsey to strike out, and it was declared carried.

The SECRETARY read the sixteenth section, as follows:

SEC. 16. Nothing in this article contained shall affect the power of the Legislature in matters of quarantine, or relating to the port of New York, or the interest of the State in the lands under water and within the jurisdiction or boundaries of any city, or to regulate the wharves, piers, or slips in any city.

Mr. VERPLANCK—I wish to move a reconsideration of each section of this article that has been adopted by the Convention.

Mr. VEEDER—I object.

The PRESIDENT—Objection being made, the motion lies on the table, under the rule.

Mr. OPDYKE—I offer the following amendment:

"SEC. —. The restrictions on the power of the Legislature contained in section 12, of article —, of this Constitution, shall apply to common councils of cities, and to boards of supervisors of counties."

Mr. VERPLANCK—I would like to know what this means, and what it applies to. The gentleman does not even give the section.

Mr. OPDYKE—The section I refer to is contained in the report of the Committee on the Powers and Duties of the Legislature, and I will read it:

SEC. 12. The Legislature shall not grant any extra compensation to any public officer, servant, agent or contractor after the service shall have been rendered, or the contract entered into, nor increase or diminish the compensation of any public officer, agent, contractor or servant, except judicial officers, during his time of service.

Now, Mr. President, I offer this amendment as an additional section. It will be seen that we have provided that the legislative power of the State shall be thus restricted. Now, I maintain that it is important that we thus restrict legislative power in cities and counties. In the city of New York it has come to be one of the most serious evils, that of giving extra compensation to contractors. We have adopted a restriction in that regard in the Legislature which is most salutary, and I am sure it will be most salutary in the city of New York, and I think it would be most salutary everywhere.

The question was put on the adoption of the amendment of Mr. Opdyke, and it was declared carried.

Mr. RUMSEY—The amendment which I proposed, declaring the effect of this article, was stricken out with the article. I move to add it at the end of section 2 as an amendment. It is a proposition that nothing in this article shall be construed to prevent the Legislature from abolishing any office in the city of New York except the mayor.

A DELEGATE—It was stricken out by order of the Convention, was it not?

Mr. RUMSEY—It was stricken out with the whole section. I offer it now as an amendment to the second section.

Mr. R. BROOKS—If I recollect aright, a separate vote was taken on that—it was a distinct question.

The PRESIDENT—The statement of the gentleman is correct.

Mr. BERGEN—I move that the Convention do now adjourn.

Mr. HUTCHINS—I would ask the Chair what would be the effect of an adjournment now?

The PRESIDENT—The Convention would not meet again until to-morrow morning.

The question was put on the motion of Mr. Bergen to adjourn, and, on a division, it was declared lost by a vote of 8 ayes—the noes not counted.

Mr. BERGEN—I call for a count on the other side, as I think there is no quorum present.

The question was again put on the motion of Mr. Bergen, and, on a division, it was declared lost by a vote of 18 to 61.

Mr. S. TOWNSEND—It is said, Mr. President, that in olden times "criminals were hung that judges might dine." I do not suppose that it is the desire of three or four millions of people in this State that we should serve them in framing this Constitution at the expense of losing our dinners, and I move that we take the usual recess.

The question was put on the motion of Mr. S. Townsend, and, on a division, it was declared carried by a vote of 51 to 25.

So the Convention took a recess until seven o'clock P. M.

EVENING SESSION.

The Convention re-assembled at seven o'clock P. M.

The Convention resumed the consideration of the article reported by the Committee on Cities, their organization and powers.

The PRESIDENT announced amendments generally to be in order.

Mr. VERPLANCK—I move the following amendment:

"After the adoption of this Constitution the commissioners of the Niagara frontier police district shall be elected by the electors of that district, or appointed by such city officers elected by the electors of the city of Buffalo, as the Legislature shall designate for that purpose."

The question was put on the amendment offered by Mr. Verplanck, and it was declared lost.

Mr. HADLEY—I move to amend the first section by inserting in the seventh line before the word "their" the words "them and," so that it will read, "And shall have power to investigate their acts, and have access to all books and documents in their respective offices, and to examine them and their subordinates under oath." The object of this amendment is this: that the mayor may have power to examine the heads of departments as well as their subordinates under oath. The section as it now reads is, that the mayor shall have the power to examine the subordinate officers. I desire to amend it so that he shall have the power to examine the heads of departments and their subordinates.

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Mr. RUMSEY—It seems to me that that might be an infringement of a rule of law that has been well established, and long sustained, which entitles every man to exemption from examination as a witness against himself whenever he may be prosecuted criminally; and that this Convention ought to hesitate before they adopt a provision of that kind. If such a provision is adopted it should be coupled with the further provision that the evidence which the accused may give, should in no case be used for the purpose of prosecuting them criminally; and unless the amendment be offered in that way I should object seriously to the adoption of it.

Mr. HADLEY — I consent to modify the amendment in that way.

Mr. RUMSEY—Annex at the end of that sentence, "but no evidence taken on such examination shall be used in a criminal proceeding against the officers so removed."

Mr. M. I. TOWNSEND—Civil or criminal.

Mr. RUMSEY—No; let it be simply "criminal" in the Constitution.

The SECRETARY proceeded to read the amendment as follows:

"To insert after the word 'examine' in the sixth and seventh lines of the first section, the words 'them and;' and after the word 'oath,' the words, 'the evidence given by such officer shall not be used in any criminal proceeding against such officer.'"

Mr. ALVORD—I would like to ask the gentleman from Seneca [Mr. Hadley] and the gentleman from Steuben [Mr. Rumsey] whether that includes subordinates also?

Mr. RUMSEY—Yes, sir.

Mr. ALVORD—They may not be officers; they may be simply clerks.

Mr. RUMSEY—Put in at the end "all officers and their subordinates."

Mr. M. I. TOWNSEND—"Persons so testifying,"

Mr. RUMSEY—"Against persons so testifying," instead of "officers"—put it in that form.

The question was then put on the amendment offered by Mr. Hadley, as thus modified, and it was declared carried.

Mr. COMSTOCK — I believe general amendments are in order. I propose an amendment in what I understand to be the second section. It was the second section of Mr. Murphy's report, which I believe is substituted as the second section of the majority report, with some amendments. I call the attention of members of the Convention to the ninth line of that section, in which the words "by existing laws or" are interpolated. Those were inserted before the substitute was offered, and when the substitute was accepted those words were accepted with it. I move to strike them out, so that it will read "all city officers, for whose election or appointment no provision is made in this article, shall be elected by the voters of the city at large, or by some division thereof, or appointed by the mayor, with the consent of the board of aldermen, as shall be provided by law." Now, I am not aware that there is any city officer except those provided for by existing laws, or in this article of the Constitution, so that the first obvious remark upon the matter, as it now reads, is that it operates upon nothing whatever. I take it for granted that every officer in the city of New York holds according to an existing law, or according to this article of the Constitution, and will so hold. Therefore, there is nothing else for the provision to operate upon. In other words, the exception made is just as broad as the enactment itself. But a more material objection, I apprehend, is this, that it prevents the Legislature from interfering with the manner in which all the existing officers of the city are appointed or elected. There are now many officers in the city of New York, I suppose, who, under the legislation of the last few years, are not elected by the people of the city or appointed by any city authorities; and I suppose the true meaning of this interpolation is to prevent the Legislature forever from interfering with that class of officers. An exception is a prohibition, as every lawyer knows, in most cases. The plain English of this provision is that except officers provided for by existing laws or in this article, they shall be elected by the people of the city or appointed by city authority. In other words, all those officers who are provided for by existing laws or this article shall not be elected by the people or appointed by the city authorities. The Legislature hereafter can make no provision on that subject. The express exception here, I apprehend, will prevent legislative interference forever, and that probably was the design. I move to strike out the words.

Mr. LAPHAM—I propose an amendment which will obviate the difficulty, I think, and that is to amend the section so that it will read in this form, "All officers for whose election or appointment no provision is now or shall hereafter be made by law or in this article," etc.

Mr. COMSTOCK—That would not alter it at all. It would be the same thing precisely.

Mr. HUTCHINS—I hope the amendment proposed by the gentleman from Ontario [Mr. Lapham] will be adopted, because it leaves it entirely in the control of the Legislature.

Mr. COMSTOCK—I answer that if you strike out the words as I propose, it is then precisely in the power of the Legislature where it ought to be.

Mr. HUTCHINS—If we strike that out I do not know where we shall be. The gentleman from Onondaga [Mr. Comstock] says it does not affect any officer now that he knows of. It may not; but there may be cases where offices would be blotted out of existence by this provision, which would create confusion. I am in favor of leaving it to the Legislature that they may abolish the offices afterward under the amendment as proposed by the gentleman from Ontario [Mr. Lapham].

Mr. COMSTOCK—I will tell the gentleman where we should be precisely. We should then be under the Constitution; and except so far as the Constitution prohibits, the Legislature could interfere; and with that position I apprehend every body ought to be content.

Mr. ALVORD—It does seem to me, sir, that there can be no sort of question upon the posi-

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tion taken by my colleague from Onondaga [Mr. Comstock], with reference to this matter. If you say "the officers who are now by law appointed or elected," so far as those officers are concerned, placing them in the Constitution, you prohibit the Legislature from ever interfering in any way with regard to them. Let us get away from the city of New York for a single moment, and go into the country. In the city in which I reside, the treasurer or tax receiver, who to a certain extent represents the comptroller in the city of New York; being the financial officer of the city, is now appointed by the mayor and common council. Our city is rapidly increasing in population, and the time may come when it would be advisable and it may be almost necessary that that power should be taken from the mayor and common council and put into the hands of the people to elect that officer as they do the mayor and aldermen. That officer being now appointed by the mayor and common council, under the law which now exists, this could not be done. The amendment of the gentleman from Ontario [Mr. Lapham] to the amendment of my colleague [Mr. Comstock] would absolutely prohibit the Legislature from interfering with it. I think the language is broad enough in the other section. It leaves it there to be prescribed by law. All officers not named in this article shall be prescribed by law. So far as it regards the present laws there is no necessity for the Legislature to go to work and pass laws to resurrect laws. They are the laws of the land, and if not inconsistent with the Constitution they will stand without the necessity of re-enactment. Let us leave the Legislature to alter or modify those laws as they may see fit to do.

Mr. LAPHAM—The gentleman from Onondaga [Mr. Alvord] is entirely mistaken as to the effect of this proposed amendment. These sections provide for the election of a mayor, they provide for the election of a comptroller, and receiver of taxes, and for no other officers. They provide for the election of three officers only. By this amendment it is proposed to have all officers in cities for whose election or appointment no provision is made in this article, elected by the voters of the city at large, or of some division thereof, or appointed by the mayor with the consent of the board of aldermen. Gentlemen will see that this is a renewal of the very question we have been discussing for several days as to whether any power shall be reserved to the Legislature to appoint these commissions. It utterly annihilates that power if this amendment passes.

Mr. ALVORD—It says "city officers."

Mr. LAPHAM—Many of them are city officers; that is the very claim made here, and that will be the claim made if this amendment is adopted; that it wipes out entirely the power of any appointment of officers to officiate in the cities in any capacity except in one of the modes provided; that is, elected by the voters of the city at large, or appointed by the mayor. That is the intention of this amendment. Now, the amendment I propose is this: it provides for a *casus omissus*. In case there is no provision by existing laws, or shall be no provision made by laws hereafter to be enacted, or if, in the Constitution, no provision is made, then it provides the manner in which officers shall be chosen. That is the object of this provision, so that the section when amended, if amended as I propose, will read in these words: "All officers for whose election or appointment no provision is now or shall hereafter be made by law or in this article, shall be elected by the voters of the city at large." That leaves the Legislature at liberty from time to time, as necessity shall require, to change the mode of appointment of one or more of these officers.

Mr. DALY—The amendment proposed by the gentleman from Onondaga [Mr. Comstock], in my judgment, does not alter the sense of the original section. I took occasion to call the attention of the Convention this morning to the importance of this particular provision, and with reference to the ingenious manner in which it was framed. I stated then, and I state now, that under this provision in reference to existing laws there are officers, at least in the city of New York, under existing laws, who are not city officers. How it may be in other counties or in other cities in the State I am not informed. But there is a large number of officers discharging public duties in the city of New York who do not come under the denomination of city officers. I stated this morning that the practical effect of this section, if enacted, would be to recognize this class of officers as exempt from the operation of the general provision which provides for the election by the people or the appointment by the local authorities of city officers. I agree with the gentleman from Onondaga [Mr. Comstock], as I think any lawyer must agree, that the effect of a positive provision of this kind in the fundamental law, accompanied by an exception excepting officers in existing laws, impliedly expresses that the class of excepted officers is not to be elected or appointed in the manner provided for.

Mr. LAPHAM—Will the gentleman allow me a question? Are not the Central park commissioners to be deemed city officers within the meaning of this article?

Mr. DALY—No, sir. They do not come under the denomination of city officers.

Mr. LAPHAM—They act nowhere else but in the city.

Mr. HUTCHINS—I would ask the gentleman from New York [Mr. Daly], what kind of officers they are unless city officers?

Mr. LAPHAM—I suggest they are city officers, and if this amendment prevails they would have to be elected by the electors at large or appointed by the mayor.

Mr. ALVORD—I would like to ask the gentleman from New York [Mr. Daly] or the gentleman from Ontario [Mr. Lapham] whether the result of the amendment as proposed does not take away from the Legislature the power ever to change the law by which the park commissioners are at present appointed?

Mr. LAPHAM—No, sir.

Mr. ALVORD—It looks to me as if it did. I am perfectly willing, so long as the Legislature shall see fit, to have the Central park commissioners appointed in the manner that they are now, that they should be so appointed; but if the Legislature wish to change their views on

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that subject, and cause them to be elected, I wish the Constitution to leave it so that they shall be. So in regard to the various commissions in the city of New York and any thing of that kind. This is an attempt on the part of these gentlemen, not only to take care of the police and the sanitary commissions, but now to go to work and put into the Constitution every existing commission, every one, so that you cannot get rid of it. The plain, simple, clear, unmistakable explanation of the proposition of the gentleman from Ontario [Mr. Lapham] and the section as it now stands, is to crystalize in the Constitution the city commissions now and forever, and take away from the Legislature any power to repeal or change them.

Mr. COMSTOCK—If these words are stricken out, as I propose, the provision is like that of the Constitution of 1846. The clause in the Constitution of 1846 provides that all city officers shall be elected by the people of the city, or some division of the city, or appointed by some authority of the city; and it does not make the exception which is made by these interpolated words. Now, it is not apparent to me why any one should wish to make this article of the Constitution more obnoxious to the people of the great cities than the Constitution under which we are now living. They hoped to have that Constitution changed for the better in respect to that; but here is a plain, naked proposition to make it infinitely more obnoxious. Now, one or two words about these city officers. It is said that the Central park commissioners are not city officers. How are they appointed, let me ask my friend from New York [Mr. Hutchins]?

Mr. HUTCHINS—They are appointed by the Legislature.

Mr. COMSTOCK—Then let me ask, if they are city officers, how could they be appointed by the Legislature under the Constitution of 1846? That Constitution, in black and white, prohibited that thing.

Mr. DALY—In answer to the gentleman from Ontario [Mr. Lapham] I will call his attention to the provision of the Constitution of 1846 in these words:

"All city, town, and village officers whose election or appointment is not provided for by this Constitution shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof as the Legislature shall designate."

Mr. POND—Read the balance of the section.

Mr. DALY—That is the whole of it, for this purpose.

Mr. POND—I think not. The balance of the section provides for those subsequently created, for new officers.

Mr. COMSTOCK—That does not cover what I was talking about.

Mr. POND—But this Central park commission was a new office created by the Legislature under that clause.

Mr. DALY—I simply meant to say this: This section speaks of city, town and village officers. If the gentleman from Saratoga [Mr. Pond], who asked this question, will give me his attention for a moment, he will see that the first portion of this section refers to city, town and village officers, and prescribes the manner in which they shall be elected or appointed—that they shall be elected by the people or appointed by the authorities thereof, that is, by the authorities of the city, town or village. Then the remaining passage which he desires me to read refers to other officers who are not city officers, as they come under another designation, and they are to be appointed or elected as the Legislature shall provide. Now, I say that the officers in the commissions fall under the designation of "other officers;" and have been so regarded by the judicial decisions of the courts. And therefore under this amendment which has been made on the motion of the gentleman from Richmond [Mr. Curtis] there is a provision in accordance with the provision of the Constitution of 1846 providing for the mode of the appointment or election of city officers except those under existing laws; and those under existing laws do not come under the denomination of city officers, as understood when the Constitution of 1846 was enacted, for if they did they could not be appointed in the manner which the laws creating them have provided, but must, if they were city officers, have been elected or appointed in the mode prescribed by the Constitution of 1846. This has been the judicial interpretation of the courts, and the officers under "existing laws," that is, under the commissions, come under the designation in the Constitution of 1846 of "other officers," that is, officers other than city officers who may be appointed in the mode which the Legislature shall direct, as the courts have held, and which they could not have held if they had regarded them as city officers within the meaning of the Constitution of 1846. The section is therefore susceptible of the construction which the gentleman from Onondaga [Mr. Comstock] has put upon it, being positive in the provision providing for the mode of the election of city officers, or appointment of city officers, and then excepting from that provision all officers under existing laws, it makes a distinction between the one and the other—a distinction similar to that which exists in the Constitution of 1846. This is my interpretation, but at all events the question raised is manifestly so grave a one that the Convention should hesitate before they enact a sweeping clause of this nature, which, in the language of the gentleman from Onondaga [Mr. Alvord] may crystalize the commissions under existing laws, by a fundamental constitutional provision.

Mr. RUMSEY—I stated this morning, when I offered an amendment, that I desired to keep the cities entirely under the control of the Legislature so far as it could be; and when I said so I intended precisely what I said; and I am willing now that a provision should be made here by which the Legislature shall have the power to change the mode of appointment of city officers. The amendment which I proposed this morning was adopted, and when the whole section was stricken out that went out with it. I have prepared an amendment which I propose to offer as an addition to this section. If the gentleman from

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Onondaga [Mr. Comstock] will listen to it as read by the Secretary, it will, I think, satisfy him, and accomplish the object which all parties have in view with regard to this matter.

The SECRETARY read the amendment, for information, as follows:

"Nothing in this article contained shall be construed to prohibit the Legislature from abolishing any office in such cities, except the office of mayor and comptroller, or to change the mode of their election."

The PRESIDENT stated the question upon the amendment offered by Mr. Lapham to the amendment offered by Mr. Comstock.

Mr. HUTCHINS—In relation to this matter of the Central park commission, for, really, that is the only commission affected by this proposed amendment of the gentleman from Onondaga [Mr. Comstock], I would say that I think that the amendment offered by the gentleman from Ontario [Mr. Lapham] should be adopted.

Mr. DALY—Will the gentleman allow me to ask him a question? Are there not other officers appointed under existing laws in the city of New York besides the Central park commission? Are there not the police commissions, the health commissions, the audit board, and others appointed under existing laws?

Mr. HUTCHINS—I know of no other commissions appointed by State authority. We are speaking of commissions appointed by State authorities—by the Governor or by the Legislature. The police commissions and the health commissions stand upon entirely different ground. That has been discussed here, and every member of the Convention understands it. Now, the gentleman from Onondaga [Mr. Comstock] asked me why, if the Central park commissioners were city officers, it was not unconstitutional to pass the act creating that commission, and said that if they were city officers the act was clearly unconstitutional. I would inform the gentleman that that act was passed in pursuance of a provision in the last clause of the second section of the tenth article of the Constitution of 1846, which provides that "all officers whose offices may thereafter be created by law, shall be elected by the people, or appointed as the Legislature may direct;" and under that provision, upon the question being raised on one occasion, in the first district, the supreme court decided that the law was constitutional.

Mr. ALVORD—How is your street commissioner appointed?

Mr. HUTCHINS—The street commissioner is appointed by the mayor.

Mr. ALVORD—I want to know, then, if our view is correct, if it should be necessary hereafter to appoint him in some other way, by an election of the people, in the former way the Legislature would not be forbidden to make that change.

Mr. HUTCHINS—I think not.

Mr. ALVORD—I think they are.

Mr. HUTCHINS—Now, as the gentleman disagrees with me, I aver that if we adopt the amendment of the gentleman from Steuben [Mr. Rumsey] it certainly covers the whole case, because it expressly provides that the Legislature may hereafter abolish any city office, except the mayor and comptroller, and change the mode of appointment, and that provision would certainly cover it, and I would vote in favor of it. That has been adopted once by the Convention, as a part of the third section, and was stricken out when the third section was stricken out, and if the amendment of the gentleman from Ontario [Mr. Lapham] should be voted down, as also the amendment of the gentleman from Onondaga [Mr. Comstock], I hope then to have the opportunity to vote for the amendment proposed by the gentleman from Steuben [Mr. Rumsey], that will cover all these cases, remove all doubt, and put the entire control of the matter of abolishing any office in the hands of the Legislature.

Mr. LAPHAM—I do not see how there can be any question whatever in regard to the effect of this section, in case the amendment I have submitted is adopted. What is, then, the provision of the section? It is simply this: in case there is no provision now made by law, and no provision shall hereafter be made by law, and no provision is contained in the article itself, then officers shall be appointed or elected as provided by law. It leaves the legislation to be changed precisely as the necessities of the case may suggest. It leaves all existing laws in force.

Mr. COMSTOCK—Let me ask the gentleman wherein, in substance and effect, his amendment differs from mine?

Mr. LAPHAM—I will state to the gentleman very frankly. The amendment of the gentleman from Onondaga [Mr. Comstock] provides that every officer in a city for whose election or appointment no special provision is made in the section, shall be elected by the electors, or appointed by the mayor. It blots out every law providing for the appointment or designation of an officer. It wipes out the entire legislation of the State, and prohibits any future legislation on the subject. That is the effect of the amendment of the gentleman from Onondaga [Mr. Comstock]. My amendment leaves the existing legislation in force. It provides for future legislation, but simply makes provision in case there is an omission in legislation for the selection of an officer, as to the way in which he shall be selected.

Mr. DALY—I claim that the gentleman has not answered, and cannot answer, the question raised as to this section. It is as plain as words can express it, that if the officers who are embraced under existing laws, are not city officers, the mode of appointment which is applicable to city officers is not applicable to them; or, at all events, it raises an exceedingly doubtful question. I submit whether we should put such a provision in the fundamental law. This is not a political question. It is a very serious and grave question with regard to the future powers of the Legislature. The Constitution of 1846 which I have just read has defined the manner of the appointment of city officers, providing that they shall be either elected or appointed by the local authorities of the city, or the town, or the village; and then provides for other officers who shall be elected or appointed in the manner which the Legislature may provide, and all those officers come under

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the latter designation. I beg leave to say to my colleague from New York [Mr. Hutchins], that I agree with him in regard to the Central park commission. It has been well managed, and highly beneficial to the city; but I do not agree with him that the whole construction of this section is confined in its operation to that commission. I enumerated ten commissions the other day, mentioning them by name, which came under the general designation of "other officers." They are not city officers, because they are not elected or appointed by the local electors or authorities, as the Constitution of 1846 requires in respect to city officers, and therefore they must necessarily come under the designation of "other officers," in the language of the existing Constitution, and the present mode of appointing them may be perpetuated—or, as the gentleman from Onondaga [Mr. Alvord] said, "crystalized"—by this provision of the Constitution.

The question was put on the amendment offered by Mr. Lapham, and it was declared lost.

Mr. COMSTOCK—With regard to the amendment suggested by the gentleman from Steuben [Mr. Rumsey], I cannot accept that proposition as a substitute for mine. It is not satisfactory. It entirely removes the principle of local government, as embraced in the Constitution of 1846. The object of my amendment was to leave the Constitution now as the Constitution of 1846 was. His amendment entirely subverts all that, if I understand it.

Mr. RUMSEY—The amendment which I propose leaves the whole matter entirely under the control of the Legislature. That is clearly where the majority of this Convention intend these things shall be left, and I therefore move my amendment as a substitute for the amendment of the gentleman from Onondaga [Mr. Comstock].

The PRESIDENT—The Chair would inquire of the gentleman if that proposition has been passed upon in committee as a distinct proposition?

Mr. RUMSEY—It is the same thing, with a little alteration.

The PRESIDENT—If the substance be the same, it will be received.

The SECRETARY proceeded to read the substitute proposed by Mr. Rumsey, as follows:

"Nothing in this article contained shall be construed to prohibit the Legislature from abolishing the office of any such city, except the office of mayor and comptroller, or to change the mode of their selection.

Mr. COMSTOCK—It seems to me—and I suppose that is the intention—that this leaves it competent for the Legislature to provide that the Governor may appoint the mayor.

Mr. RUMSEY—Any thing you have a mind to. Any thing the Legislature chooses.

Mr. COMSTOCK—I do not understand this Convention to have accepted any such principle as that at all.

Mr. ALVORD—I would ask the President—I do not know that it is a question of order, but I would ask, through the President, the Convention—whether this is not a virtual repeal, without reconsideration of the provision as it stands now, which has been accepted; and that is, that the election or appointment of all these officers must be made either by the mayor, or by the people. It strikes that virtually out, and it is in a backhanded way that it is done by the gentleman from Steuben [Mr. Rumsey]. It is not a reconsideration of what we have already passed upon, but it is a virtual rejection of what is already passed upon, by putting in matter which is entirely different.

Mr. RUMSEY—It is an amendment. It is not out of order, as I understand it, because it is a general amendment to the section, and therefore it is in order. It does just precisely what I understand I want to do, and what I understand that the rest of the Convention want to do; and that is to leave this whole question to the Legislature; and I would do it by striking out the entire article, leaving the whole question to the Legislature, if that motion were made.

Mr. VERPLANCK—I would ask the gentleman what vote of this Convention indicates, that it is the desire of this Convention, that the whole question should be left to the Legislature, whether officers should be elected or appointed?

Mr. RUMSEY—I think every vote given upon this article shows that the Convention has no sort of idea of organizing cities as a distinct government, excluding the power of the Legislature over them.

Mr. DALY—Will the gentleman allow me to ask whether he understands the vote of this Convention, as a repudiation of this principle in the Constitution of 1846, providing for the election or appointment by the local authorities of city officers?

Mr. RUMSEY—No, sir, I do not understand it as doing any such thing. I understand it as the determination of this Convention to consider all the cities of this State, as they ought to be considered, as simple, naked corporations, and subject to the power and control of the Legislature, as every other corporation ought to be.

Mr. DALY—Did the Constitution of 1846 leave them in that position under this provision?

Mr. RUMSEY—Perhaps it did not, sir; but inasmuch as it did not, it did not do what it ought to have done, in my judgment. I do not propose to go over this whole matter and discuss the question of the propriety of the election or appointment of those officers, or the rights of cities In my judgment, the cities have already every thing that the country has. When you give to them the right to organize—the same right that the country has to be organized as towns and counties—they have all that the rural districts have; and when you give to them corporate powers beyond that, you give them exceptional legislation in their favor, beyond what the mass of the people of the State have; and it is all idle to talk about their not having the same rights and privileges that the rest of the State have. They have all those rights, and more than that. Every thing beyond what the rural districts have with regard to their local organization is a boon given to them beyond what the rural districts have; and in granting them, the Legislature may do so upon such terms as it deems proper.

Mr. VERPLANCK—Another question, if the gentleman will allow me: Whether city

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officers do not perform many of the duties that are performed in towns by town officers?

Mr. RUMSEY—Certainly.

Mr. VERPLANCK—Should not cities have therefore, the same power to elect city officers, as towns have to elect town officers?

Mr. RUMSEY—No, sir, they should not.

Mr. VERPLANCK—Why not?

Mr. RUMSEY—For the simple reason that all the powers that the cities have got beyond what the towns have got, is a mere matter of favor given to their exceptional legislation in their favor beyond what the towns and the counties have. And besides, in regard to almost every officer that is appointed in the town, the manner of appointment is directed by the Legislature. Why not do it in the cities as well?

Mr. ALVORD—I must rise to a point of order, that the amendment of the gentleman from Steuben [Mr. Rumsey] if adopted, makes this section inconsistent with itself. We have already provided that "all officers for whose election or appointment no provision is made by existing laws, or in this article, shall be elected by the voters of the city at large, or of some division thereof, or appointed by the mayor, with the consent of the board of aldermen, as shall be provided by law." And this proposition of the gentleman from Steuben is in an entirely different direction, giving two methods of appointment in the same article, each inconsistent with the other.

The PRESIDENT—The Chair rules that that may be ground for its rejection by the Convention, but that it is not within his province to reject it for that reason.

The PRESIDENT stated the question to be on the amendment offered by Mr. Rumsey.

Mr. VERPLANCK—I call for the ayes and noes.

A sufficient number not seconding the call, the ayes and noes were not ordered; seventeen delegates only rising to second the call.

Mr. VERPLANCK—I shall ask to have the roll called if we are to have this kind of legislation here.

Mr. MORRIS—In all due respect, I think that fifteen is the number required to order the ayes and noes.

The PRESIDENT—The Chair would inform the gentleman from Putnam [Mr. Morris] that twenty are required to order the ayes and noes.

The question was put on the amendment offered by Mr. Rumsey, and, on a division, it was declared lost by a vote of 30 to 30.

Mr. W. C. BROWN—Is another amendment now in order?

The PRESIDENT—An amendment is now in order.

Mr. W. C. BROWN—I move to strike out all of the section down to and including the words "different classes," in the eighth line, and insert in place thereof, from the second article of the tenth section of the present Constitution, commencing "all city, town and village officers," etc. This clause has received judicial construction; it is well understood by the courts and the people, and I think it is desirable that it should be retained.

Mr. COMSTOCK—I rise to a point of order. That amendment is not germane to my proposition. It proposes to strike out a part of the section which precedes the part to which my amendment relates, altogether.

Mr. W. C. BROWN—Strike out down to the words "prescribed by law," in the fourteenth line.

Mr. McDONALD—That has already been adopted by this Convention.

The PRESIDENT—The Chair understands that it was afterward stricken out.

The SECRETARY proceeded to read the amendment offered by Mr. W. C. Brown, as follows:

Strike out of the section all down to the word "law," so as to leave only the following paragraph as it now stands:

"No city officer shall, during his term of office, hold a seat in the common council of the city, or in the Legislature of the State, and the acceptance of such a seat shall vacate his office."

And insert the following:

"All city, town and village officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof as the Legislature shall designate for that purpose. All other officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people or appointed as the Legislature may direct."

Mr. BICKFORD—Mr. President, that was adopted a great while ago.

The PRESIDENT—And stricken out afterward.

Mr. BICKFORD—No, sir; it was adopted months ago. It was adopted on the motion of the gentleman from Kings [Mr. Veeder] in the celebrated case when he moved it and afterward wished that he had not.

Mr. M. I. TOWNSEND—If it is not so, it can be corrected.

The PRESIDENT—It can be corrected by the Committee on Revision.

Mr. VAN CAMPEN—I hope this motion will prevail; not only for the reason which has been alluded to by my friend near me [Mr. W. C. Brown], that it has already received judicial construction; but the language is precisely that which, for myself, I desire to employ in regard to this question of city powers. It puts the election or appointment of the officers of a city in the hands of the electors or authorities of the city, and that is precisely according to my theory. I do not know in regard to the theory of the gentleman from Steuben [Mr. Rumsey]; but in the simplicity of the district in which I live, I think we understand this question very well, and the principle of local self-government we hold to be very important; I therefore am in favor of this amendment.

Mr. COMSTOCK—I accept the amendment of the gentleman from St. Lawrence [Mr. W. C Brown]. Being accepted, I suppose now a further amendment is in order.

The PRESIDENT—A further amendment is in order.

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Mr. COMSTOCK—I move to strike out in the latter part of the amendment the words "and all officers whose offices may hereafter be created by law," and insert after the word "Constitution" in the second line, "or whose offices shall be hereafter created," so that it will read thus:

"All city, town and village officers whose election or appointment is not provided for by this Constitution, or whose offices shall be created hereafter, shall be elected by the electors of such cities, towns and villages, or by some division thereof, or appointed by such authorities thereof, as the Legislature shall designate for that purpose."

So that the Constitution will apply the same rules to offices to be created hereafter, that it applies to offices existing. Instead of leaving the appointment or election of officers whose offices shall be hereafter created, to the discretion of the Legislature, it applies this constitutional principle, this same rule of local government, to future and to existing officers, so that they may be alike elected by the people of the city, town or village, or appointed by some authority thereof. It applies the same principle of local government in respect to future offices that it does apply in respect to existing offices. That is the purpose of my amendment and that will be the effect of it if it is adopted.

Mr. HUTCHINS—I would ask for the reading of the amendment of the gentleman from St. Lawrence [Mr. W. C. Brown], as proposed to be amended by the gentleman from Onondaga [Mr. Comstock].

The amendment was read by the SECRETARY as follows:

Mr. W. C. BROWN—I move to amend the section by striking out all down to and including the word "law" in line twelve, and inserting in lieu thereof, the following:

"All city, town and village officers whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof as the Legislature shall designate for that purpose."

Mr. HUTCHINS—I do not understand that to be the whole amendment as offered by the gentleman from St. Lawrence [Mr. W. C. Brown].

The SECRETARY read further—

"All other officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed as the Legislature may direct."

Mr. HUTCHINS—I understand the amendment of the gentleman from St. Lawrence [Mr. W. C. Brown] to take the entire section from the present Constitution and that contains this line—"And all officers whose offices may be hereafter created by law."

Mr. COMSTOCK—I would explain to the gentleman that that is precisely what I propose to strike out in that section and insert it in the other place, thus reversing the meaning entirely.

Mr. HUTCHINS—All I have to say is, that if this amendment is adopted, it destroys the health and police commissions.

Mr. M. I. TOWNSEND—It must necessarily be so. It takes away from the Legislature the power of creating any officers except such as shall be locally elected or appointed. There is no doubt about it.

Mr. POND—When the gentleman from Onondaga [Mr. Comstock] made his first motion to amend, this evening, he said the object was to make this section precisely as the Constitution of 1846 left this question, and I understood him to affirm that, by that Constitution, it was expressly provided that "all city, town and village officers, whose election or appointment is not provided for by this Constitution shall be elected by the electors of such cities, towns and villages, or by some division thereof, or appointed by such authorities thereof as the Legislature shall designate for that purpose." I understood him to affirm, also, that that was the only language in the section that applied to city officers; and when I asked the gentleman from New York [Mr. Daly] who read so much of that section to read the residue, I was responded to by that gentleman by his saying that the remaining portion of it had no reference to city officers, and that the Central park commissioners in New York were not city officers at all, and could not be, because they could not be appointed by the Legislature under the Constitution of 1846. But now, when the gentleman from St. Lawrence [Mr. W. C. Brown] offers section 2 of article 10 of the Constitution of 1846 as an amendment, then the gentleman from Onondaga [Mr. Comstock] discovers very quick that this last clause does refer to these commissioners, and that they are city officers, and he proposes, instinctively and instantly, to amend this very section of the Constitution of 1846, so as to prohibit the Legislature from having or exercising the very power which is expressly conferred by the section. As I understood it the words "city, town and village officers," in this section of the Constitution of 1846, is only applied to officers then in existence—that is, in existence at the time of the adoption of the Constitution of 1846. And the court of appeals, as I understand it, so construed those words as used in this section, and also gave a construction to the residue of the section which I perceive the gentleman from Onondaga [Mr. Comstock] also understands very well now, and that is that "all other officers whose election or appointment is not provided for by this Constitution, and all officers whose offices may hereafter be created by law, shall be elected by the people, or appointed as the Legislature may direct." Now, Mr. President, I understood that this last clause of the section did refer to city officers; that the Central park commission, for instance, was an office created by the Legislature, after the adoption of the Constitution of 1846, and it was therefore a city office, and it would consequently be abolished by the amendment proposed by the gentleman from St. Lawrence [Mr. W. C. Brown] as the gentleman from Onondaga [Mr. Comstock] proposes to change it. I discover the design when this section of the Constitution of 1846, pure and simple, is proposed to be inserted here. I perceive that the gentleman from Onondaga [Mr. Comstock] understands the section as I do, and hence he proposes now

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to strike out the words in the last clause of it, which, according to his former construction, did not apply to city officers at all. He proposes, as an amendment, to strike those words out and put them into the first clause of the section, so that the entire power of creating new offices and prescribing the manner of filling them shall be entirely taken away from the Legislature. Now, sir, this is the old question over again. We are still engaged on the same question we have been engaged in discussing and voting on all day, and that is whether the power to create these commissions is to be abolished and entirely stricken out of the Constitution we are to frame, including the sanitary and police commissions. For one I am opposed to abolishing these commissions. I am opposed to taking away from the Legislature the power over these cities. Why, sir, they claim for the city of New York the power of local government. Sir, the city of New York is not a local institution at all. It is rather a national than a local institution. And rather than to have the whole power of the government of that city vested in the residents thereof, it ought to be conferred on and exercised by the nation itself; but certainly the State is a small enough territory, a small enough municipality, to have the supervision of the laws applicable to that locality, if it be a locality at all. Mr. President, what was the origin of these commissions? It seems to me now that many gentlemen here have entirely forgotten the necessities out of which they grew and were created. Why, sir, they were the growth of necessities existing in that city, and this fact has been admitted on this floor by the gentleman [Mr. E. Brooks] who is now arguing in favor of their abolition, and the same gentleman who originally aided in procuring the passage of those very laws. It has been stated on this floor, and I believe by the gentleman from Richmond [Mr. E. Brooks], that the police commission was the result of an application to the Legislature by the unanimous voice of the people of that great city. I would like to know why, sir, when the Legislature obeyed that voice, and responded to it by the creation of this and other commissions, they are to be charged with an evasion of the Constitution, by trick and artifice and legerdemain? I assert, on the contrary, that their action was within the very letter of the Constitution of 1846. Sir, the Constitution of 1846 was so made, in my judgment, by design, to guard against the very contingencies that arose and not by mistake, and it would have been a glaring defect, in my judgment, in that Constitution, for the Convention that framed it, to have bound up the sovereignty of this State, so that no matter what exigency might arise, no matter what necessities demanded the creation of these commissions, by the enactment of a law that should take away from the mayor of the city the power which he possessed, or the powers which the local authorities of the city possessed and abused, it would, I say, have been a glaring defect in that Constitution not to have put a clause in it providing for a supervisory power, on the part of the Legislature, over this locality. And it would be a graver error still if this Convention, after the experience which has been had under the Constitution of 1846, after the exercise of this supervisory power by the Legislature and after it had been called into exercise by the unanimous voice of all parties in that locality—it would be a gross mistake for us now not only to blot out these commissions, but also to strike from the Constitution we are to frame, the power to create them and all jurisdiction on the part of the sovereign power of the people, to supervise and regulate by law this locality, the city of New York, in any manner whatever. Now, sir, it has been said, in advocacy of the principle to abolish this power, as proposed by the representatives from the city of New York, and others, that it is necessary to do away with the power on the part of the Legislature to create these commissions, because they are made in the interest of party, and because their action has been and is now partisan. Well, I think that has been very ably answered by one of the representatives from New York [Mr. Stratton], who showed conclusively, as I think, that the action of the police commission, at least, is not obnoxious to such a charge. But, suppose it is properly chargeable with that, what do the gentlemen from New York wish to change it for? Why, simply to have their political party get possession of these same trusts and offices, and will they not be wielded in the interest of party then? Why, sir, the objection of these gentlemen is, if it is used in the interest of any party, as they allege, that their party does not possess it, and that ours does. I speak of the republican party, to which I belong.

Mr. VERPLANCK—I perceive that without you saying it. [Laughter.]

Mr. POND—Now, if it be true that these commissions were wielded in the interests of party in the city of New York, I would like to know if that is a greater evil than would exist to leave all these interests and this patronage exclusively to the local authorities. They would then be wielded in the interests of party, and not only all the offices created by these commissions would be thus used for the interest of party, but all the other city offices and patronage combined will be so used also. So that the result of creating these commissions, even if what is charged is true, is to divide between the two political parties the offices and patronage of that city, instead of having it possessed and wielded exclusively by one party. I perceive that Judge Garvin, a gentleman from New York, in arguing this morning upon the proposition to abolish the board of supervisors in that city, and in opposing it, seemed to have a distinct and definite idea that a division of powers between different bodies in that city, was necessary and essential as checks and balances, the one upon the other. In regard to that subject he contended that the interests of the city absolutely required a division of responsibility, and the lodging of various powers in different bodies, so that they might, as before said, operate as checks and balances, the one upon the other. I recognize the justness and the soundness of that argument, and think it applies in full force to this subject. But it is also further intimated by gentlemen on this floor, that the city of New York desires the possession of this

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power to control matters in that city, to the exclusion of the State, and that unless they have that power accorded to them, and incorporated, as they wish it, in the Constitution we frame, it will be surely defeated. Well, sir, I prefer to have a Constitution that ought to be adopted defeated, than to have a Constitution framed here which ought to be defeated, adopted; and for one I shall not change my action on this subject upon any such menace or threat thus implied or expressed by any gentleman from New York or elsewhere. I consider that I am here to aid in framing a Constitution for the State, the whole of it, and not for the exclusive benefit of a mere locality of it, and my duty is to endeavor to aid in making such provision as in my judgment the public good of the whole State requires, and in doing that I am not to consult solely the wishes of any particular locality. I am to consult the public good, the good of the people of this great State, in its sovereign and collective capacity as a State, as well as its separate parts. And, as I said before, in my judgment, experience has taught us that to lodge all these vast powers, including the power to make police and sanitary regulations in the local authority of a city exclusively, would be to allow them to be perverted from their proper uses to partisan ends and corrupt purposes, and to the uses of all those cliques, clans and rings which perversion originally induced the adoption of this commission system. Now, sir, I repeat that I hope the amendment of the gentleman from Onondaga [Mr. Comstock] will not prevail, and for the reason, among others, that I think the gentleman who offered it has become convinced, if he did not know before, that the last clause of the second section of article 10 of the Constitution of 1846 does apply to city officers, and gives the Legislature power over them, and to create new ones, and inasmuch as he appeared to be satisfied with that section, and claimed that the amendment first offered by him only placed the section we are considering back to where the Constitution of 1846 left this subject, and as I am also in favor of the section as it is contained in the Constitution of 1846, I hope the amendment proposed to be made to it will be defeated, and that the section on this subject, pure and simple, as contained in the Constitution of 1846, may be adopted.

Mr. FOLGER—I move the previous question.

The question was put on the motion of Mr. Folger, and it was declared carried.

The question then recurred on the adoption of the amendment of Mr. Comstock, and it was declared lost.

Mr. M. I. TOWNSEND—I would ask, Mr. President, if the amendment of the gentleman from St. Lawrence [Mr. W. C. Brown] has been adopted by the Convention.

The PRESIDENT—It has not been. It was accepted by the gentleman from Onondaga [Mr. Comstock] and became his amendment, and it was then voted down.

Mr. M. I. TOWNSEND—The gentleman [Mr. Comstock], if the Chair will allow me, moved further to amend the section offered by the gentleman from St. Lawrence [Mr. W. C. Brown].

The PRESIDENT—The Chair would inform the gentleman from Rensselaer [Mr. M. I. Townsend] he did not move to amend—he accepted the amendment of the gentleman from St. Lawrence [Mr. W. C. Brown] and then amended it as a matter of right.

Mr. POND—I think the Chair is mistaken. He accepted the amendment of the gentleman from St. Lawrence, and then proposed an amendment to it.

The PRESIDENT—The Chair did not so understand it.

Mr. FOLGER—I certainly understood the gentleman from Onondaga [Mr. Comstock] to move to amend by striking out in one place to insert in the other.

The PRESIDENT—The Chair would inform the gentleman from Ontario [Mr. Folger] that he accepted the amendment offered by the gentleman from St. Lawrence [Mr. W. C. Brown].

Mr. FOLGER—Then I move the amendment of the gentleman from St. Lawrence [Mr. W. C. Brown] pure and simple.

Mr. M. I. TOWNSEND—And upon that I move the previous question.

The question was put on the motion of Mr. M. I. Townsend, for the previous question, and it was declared carried.

Mr. HUTCHINS—I would ask for the reading of the amendment.

The SECRETARY again read the amendment.

The question then recurred on the adoption of the amendment offered by Mr. Folger, and it was declared carried.

Mr. LAPHAM—I move to strike out all of section 11, after the word "article" in the third line. That section was adopted by being passed without objection when it was read. It will be seen that the part which I propose to strike out is that which relates to the passage of general laws for the organization and government of cities, and prohibits special legislation. The section will lead to endless difficulty. The necessities of cities, and the peculiar provisions required in city charters, are so varied that they will lead to constant difficulty if this provision is left in the Constitution. I propose to leave that whole subject with the Legislature, as it has always been heretofore.

Mr. VERPLANCK—I rise to a question of order. The Convention has adopted this section, and a motion to strike it out is not in order.

The PRESIDENT—The Chair would inform the gentleman from Erie [Mr. Verplanck] that there has been no formal adoption of it. The vote has not been taken separately on the adoption of the sections, except upon amendments proposed to them.

Mr. VERPLANCK—I understand that that was the general or uniform course. It was during the first part of the sessions of the Convention.

The PRESIDENT—The Chair will hold that wherever a distinct vote has been taken upon any proposition, and it has been adopted or rejected, before the matter can be amended it must be reconsidered. No vote having been taken on this section, the Chair thinks the point of order not well taken, and it is not necessary to move to reconsider.

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Mr. VERPLANCK—I supposed it was tantamount to a vote.

Mr. ALVORD—If the gentleman from Ontario [Mr. Lapham] will pay more attention to these matters, he will find there is no difficulty. This section authorizes cities, towns and villages of this State, as they shall grow up to the position where they may require a city government, under some general provisions of law by the Legislature, to organize themselves into cities, without going to the Legislature and asking for a special charter. But we specially reserve to the Legislature, if in their judgment they shall deem it best, the power to pass special laws on the subject. It seems to me this will avoid a great deal of unnecessary legislation if the section is permitted to remain as it is. It is true, no special act shall be passed unless the object cannot be obtained under general laws, but it gives perfect power to the Legislature to change the complexion of the organic law of any cities of this State, in reference to all their requirements as, in the judgment of the Legislature, they may see fit. It does not take that power away from them; but it only lays down a general form of laws, in order to enable communities to commence a city government, but it does not prevent cities coming to the Legislature to procure such action as may be necessary, in modification of the general law, to meet their special wants.

Mr. W. C. BROWN—I hope this motion will prevail, and that the section will be stricken out. It is utterly impracticable for the Legislature to devise any general charter or general law which shall be suitable for any more than one particular city. And there is also this other objection, that it is entirely unnecessary. It neither confers power on the Legislature which they have not got, nor does it restrict them from doing any thing which they desire to do.

Mr. LANDON—I hope this section will be stricken out. In my opinion it is utterly impossible to pass general laws which shall apply to the government of all the cities. They differ in their circumstances, they differ in their necessities, they differ in a great many requirements. When I say it is impossible to pass such general laws, I think I am stating what is simply the truth. You might just as well undertake to cut a coat and have it fit every man and boy in this room, as to have a general law answer for all the cities, large and small, in the State.

Mr. RUMSEY—We have already in the Constitution of 1846 a provision of this kind:

"Corporations may be formed under general laws, but shall not be created by special act, except for municipal purposes and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws." Art. VIII, sec. 1.

Now, that is precisely analogous to the portion of the section which the gentleman from Ontario [Mr. Lapham] proposed to strike out; and under that section the court of appeals of this State has decided that the Legislature may, by special law make any corporations they see fit, they being entirely the judges whether it was necessary or not, or whether it could be embraced in the general law. It is therefore entirely useless, and the courts have held that it does not restrict the Legislature at all. It is useless, I think, to put things in the Constitution that have no meaning according to the settled construction of the courts.

Mr. MURPHY—I am sorry to hear the sentiments expressed by several gentlemen on this floor, to-night, in opposition to general laws for municipal corporations. Our statute books are burdened with special acts incorporating villages and cities. This special legislation not only swells the public statutes of the State, but introduces confusion into our laws and inflicts upon our courts interminable litigation. Gentlemen say we cannot pass general laws for the incorporation of villages and cities. I grant that in some cases there are peculiar circumstances which will require special laws; but take the great body of provisions which are required for cities or villages, and you find them common and general to all. In the first place, a large portion of municipal charters is occupied with the powers which the common council or board of trustees may exercise in regard to municipal regulations, commonly embraced in penal ordinances. Now, those ordinances for villages will be proper for all the villages of the State; and, in the same manner, the penal regulations may be the same for all the cities. For instance: fast driving, improper exhibitions in public places, obstructions in streets, and the like, are common to all communities, and should be reached by enactments common to all. There is no necessity of repeating these powers over and over again in separate charters. Take another subject-matter—that of opening, regulating and grading streets and making contracts with reference to all these objects. The same principle should prevail in all cities. There should be one uniform system throughout the State, not only for the convenience of legislation, but for this further important reason, that, when you have the decision of a court in regard to the statute, upon a question of construction arising in one city, you have a decision by which all the cities of the State have a rule, and much litigation is avoided. In the case of special charters, you multiply litigation, because the terms and provisions of these special charters differ from each other, and each give rise to its own questions of construction. As I remarked a few days ago, there is another important advantage in general laws. Such statutes will not be altered, amended or repealed by hasty and inconsiderate legislation, but will always receive, when any such action is proposed, the attention, supervision and examination of the representatives of all the cities and villages in the State, instead of the representatives only of a single city or village as in case of a special law, which relates only to that city or village. Our statute books are full of these special laws, improvidently and carelessly enacted, and our courts are constantly called upon to make decisions upon them; and thus, legislatively and judicially, the State is burdened, when it might all be avoided by an uniform system, which would be afforded by general laws. I do not pretend that there may not be a necessity of special legislation on some subjects peculiar to one municipality or another, arising from its location; but as far as that is con-

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cerned this provision wisely provides that in such cases the Legislature may, when necessary, pass special laws. What is proposed by general laws in regard to cities is similar to what has been enacted in regard to railroads. There is probably no subject more difficult to determine by general law than the construction of railroads. Yet, we have a general law for that purpose and it works well. When it is found that there is something specially needed in regard to some particular road, that legislation if proper, is granted, without being in conflict with the general law. I hope, therefore, sir, that we will extend this principle of general laws to our cities and villages.

Mr. RUMSEY—Will the gentleman from Kings [Mr. Murphy] say whether this section we have under consideration will accomplish his object and compel the Legislature to pass any general law with regard to cities or villages?

Mr. MURPHY—I will answer the gentleman. Under the provisions of the Constitution of 1846, requiring the Legislature to pass general laws in regard to corporations other than municipal, the Legislature complied with the requirement.

Mr. RUMSEY—What I mean is simply this: does this section, under the decision of the court of appeals, compel the Legislature to abstain from passing special laws, or does it compel it to pass general laws in any case? If it does not do that it is a useless provision.

Mr. MURPHY—I have not the particular section before me to which the gentleman refers. If he will read it I may then be able to answer it.

Mr. RUMSEY—I will read it: "The Legislature, at its first session after the adoption of this Constitution, shall pass such laws as may be necessary to give effect to the provisions of this article." That they do not propose to strike out. This is what they propose to strike out: "Except in cases general laws shall also be passed for the organization and government of cities, and no special act shall be passed, except in cases where, in the judgment of the Legislature, the object of such act cannot be attained under general laws." This is what they propose to strike out, simply because the court of appeals have said that it leaves it optional with the Legislature to pass a special law in every case.

Mr. MURPHY—I will ask the gentleman, on the other hand, does not the present Constitution require the Legislature to pass general laws for the creating of corporations?

Mr. RUMSEY — Certainly it does; and the court of appeals have decided that the Constitution provides that they may do it, but that it rests in the judgment of the Legislature to determine whether the object could or could not be attained by general laws.

Mr. MURPHY — Has not the Legislature passed those laws?

Mr. RUMSEY—They have; but the trouble is the court of appeals—

Mr. MURPHY—What the court of appeals decided on this question is not pertinent to this matter. The Legislature have passed general laws for the incorporation of railroads, manufacturing companies, and for all kinds of corporations which they were required to do, though according to the court of appeals they were not bound to do so. The conscientious, if not the legal obligation existed, and has been observed. Members of the Legislature are bound to carry out the requirements of the Constitution, I mean as men of truth and regardful of their oath of office. There may not be any means of legal enforcement of it, but they are nevertheless bound to pass general laws wherever the object of incorporation can be effected in their conscientious judgment in that mode.

Mr. RUMSEY—The trouble is, the court of appeals says they are not.

Mr. LAPHAM — The provision of the Constitution of 1846, to which the gentleman [Mr. Murphy] has alluded, and which he assisted in framing, expressly excepts corporations for municipal purposes. It does not provide at all for general laws for municipal corporations.

Mr. MURPHY—I was aware of that. We are proposing to take that step now. The Convention of 1846 was not prepared to go so far then.

Mr. LAPHAM—I am arguing that the Constitution of 1846, in this respect, does not need any change. We have not been sent here for the purpose of making a change in the provisions of the Constitution of 1846, in this particular. There is another objection to this provision. This provision is mandatory. It says the Legislature shall enact these laws. It supersedes all old laws upon the subject, and requires a new system or code of laws for this purpose to be framed. Now, there is a general law upon the statute book under which every incorporated village, on reaching a population of a certain amount, may form itself into a city. But it has been found that the general law, in regard to the incorporation of villages, and regulating their affairs, is so imperfect in its character, that almost every incorporated village in the State has been compelled to go to the Legislature for special relief. And in the very nature of things, applications will be annually made by cities and incorporated villages for such special enactments as they find necessary. It is inevitable that it will be so. This attempt to provide by the Constitution for general legislation, even if successful, will never do any good. It is the uselessness of the provision that led me to move to strike it out.

Mr. SMITH—I trust this amendment will not prevail. It will be remembered by gentlemen who have attended the sessions of this Convention, at an earlier stage of our deliberations, very much attention was given to this subject of special legislation. It was felt and agreed on all hands that there was a great evil under which the State had suffered. Efforts were made to provide against this evil, so far as it seemed practicable to go in that direction. It is suggested by the gentleman upon my left [Mr. Lapham], who makes the motion to strike out this section, that the provisions to which I allude refer to corporations other than municipal. That is true, but still the evil embraces special legislation in regard to municipal corporations as well, and the remedy now proposed is in the same direction as the provisions adopted in relation to other corporations. It is true, this provision does not take away from the Legislature the power to enact a special law.

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It was not necessary to have a decision of the court of appeals to show us that. The section itself so reads, and is, therefore, plainly understood by every one. But it does require that the Legislature shall pass general laws under which municipal corporations may be organized. And the tendency of the provision, therefore, is to decrease special legislation by requiring the enactment of general laws under which these corporations may be organized. And although the section does not inhibit the Legislature from passing special laws, it will be a clear expression of the people of the State, if they adopt this Constitution, against the passage of special laws whshever general laws will attain the same object. It is to be presumed that the Legislature would respect the voice of the people, and refrain from passing special acts except in the rare cases where general laws would not answer the purpose. As the provision could do no harm, and might be productive of good, I see no reason why it should not be retained as it now stands. It is in the same direction that we have gone in relation to other subjects, and designed to relieve us from the evil under which the State has so long suffered.

The question was put on the motion of Mr. Lapham to strike out the eleventh section, and it was declared lost.

Mr. VERPLANCK—Mr. President, when are the motions to reconsidor to be heard?

The PRESIDENT—They will be heard after a vote shall be passed in the affirmative, reconsidering the vote adopting the article, if it shall be adopted.

Mr. FOLGER—I move to strike out the whole article.

Mr. VAN CAMPEN—I call for a count.

Mr. PROSSER—I would like to hear the article read.

The SECRETARY read the article as amended.

Mr. C. C. DWIGHT—There is a specific amend ment which I have desired to offer before this time, but it had escaped my recollection. If the gentleman will for a moment withdraw his motion to strike out the article, I will offer it.

Mr. FOLGER—I will do so.

Mr. C. C. DWIGHT—It is to strike out the words "every two years" from the first section of this article. The city of Auburn and several other cities of this State, as the members of this Convention are aware, elect their mayors every year, for one year. There is no desire expressed to make any change in that respect. I move to strike out the words "every two years," and leave the term of office of the mayor to the law organizing each particular city.

The question was put on the adoption of the amendment of Mr. C. C. Dwight, and it was declared carried.

Mr. BECKWITH—I would call the attention of the Convention to what seems to me to be an inconsistency in section 2. It says: "No city officer shall, during his term of office, hold a seat in the common council of the city." I would like to know if a member of the common council is not a city officer? If so, I think this provision is inconsistent with itself.

Mr. HARRIS—He is an alderman.

Mr. BECKWITH—Is he not a city officer?

Mr. HARRIS—No; he is a ward officer.

Mr. M. I. TOWNSEND—I think that there is one officer who, in many cities, holds a seat in the common council, and that is the mayor, who, I think, being elected by the whole city must, of necessity, be held to be a city officer; this section will prohibit the mayors of cities, in those cities where they now sit in the common council, from sitting there. Then there are recorders; we once had a recorder sit in the common council of our city.

Mr. BECKWITH—I move to strke out the words, "in the common council of the city or."

Mr. ALVORD—I hope that the amendment, in that shape, will not prevail. I agree with the gentleman from Clinton [Mr. Beckwith] that that may well be considered to mean an alderman or a common councilman. But it is true that in some of the cities of this State the mayor and recorder are members of the common council. I trust, if we are to make any provision in the Constitution on this subject, it will not be confined to the mayor. The mayor should be the executive, the head of the city government, and should have the same power, relatively, that the Governor of the State has—to pass upon the acts of the common council, by way of veto, and have a supervision over their actions. The recorder, in most instances, is a judicial officer, and he should also stand outside the ordinary acts of the common council that they are called upon to determine. I trust, therefore, that the full scope of the amendment of the gentleman from Clinton [Mr. Beckwith] will not be adopted by this Convention.

Mr. M. I. TOWNSEND—If the gentleman will submit an amendment, I think it will remedy the difficulty.

Mr. BECKWITH—I propose to amend it so that it will read "No city officer other than mayors and recorders shall, during their term of office, hold a seat," etc. The aldermen, I suppose, are ward officers.

Mr. ALVORD—I understood the gentleman to amend this so as to avoid the objection that I make. It certainly now makes it necessary that the mayor and recorder should be members of the common council. It makes them, by virtue of their office, members of the common council.

The question was put on the amendment of Mr. Beckwith, and it was declared lost.

Mr. RUMSEY—To remedy that apparent inconsistency, I move to amend by saying "members of common council shall hold no other office in the city, and no city officer shall hold a seat in the Legislature of the State, and the acceptance of such a seat shall vacate his office."

The question was put on the amendment of Mr. Rumsey, and it was declared adopted.

The question then recurred on the adoption of the article.

A DELEGATE—Is there not a motion pending to strike out the article.

The PRESIDENT—That was withdrawn.

The question being put on the adoption of the article, it was declared carried, and the article was referred to the Committee on Revision.

Mr. HUTCHINS—I give notice that I will, at

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some future day, move a reconsideration of the second section.

The PRESIDENT—Which notice will lie on the table.

Mr. FRANCIS—I move that we adjourn.

Mr. M. I. TOWNSEND—I ask what time that will adjourn us to?

The PRESIDENT—To to-morrow morning at ten o'clock.

The question was put on the motion of Mr. Francis, and it was declared carried.

So the Convention adjourned.

SATURDAY, February 1, 1868.

The Convention re-assembled, pursuant to adjournment, at ten o'clock A. M.

Prayer was offered by Rev. Mr. GRAVES.

The Journal of yesterday was read by the SECRETARY, and approved.

Mr. GOULD—I ask leave of absence for Mr. Hale, of Essex, for one week, in consequence of sickness in his family.

No objection being made leave was granted.

Mr. GOULD—I ask leave of absence for Mr. Potter, of Erie, in consequence of sickness in his family.

No objection being made leave was granted.

Mr. GOULD—I ask leave of absence for Mr. E. A. Brown until Tuesday next.

The question was put on granting leave of absence, and it was declared lost.

Mr. AXTELL presented a memorial from the Seneca nation of Indians remonstrating against making Indians citizens.

Which was referred to the Committee of the Whole having the subject-matter in charge.

Mr. COMSTOCK—I will take this occasion to bring up the motion, of which I have given notice, to reconsider the article on corporations. If upon looking at the matter those who are present shall see any thing about it to suggest that we should wait for a larger attendance of the Convention, I will very cheerfully consent to a postponement, but I persuade myself that the purpose I have in view will meet with general approval. The article on corporations, document No. 53, is so framed that corporations must be formed under general laws, and shall not be created by special act except for municipal purposes. The purpose of my motion is to reconsider the article so as to include within the exception literary and charitable corporations. I propose to leave it possible for the Legislature to grant a special charter to a literary, scientific, charitable or benevolent corporation, for reasons which I will suggest to the Convention. I make this motion in the interest of charity, and in what I have to say for it I plead for the cause of charity, which I am satisfied will be very much obstructed and impeded unless this change in the article shall be adopted. In another sphere of public duty, and in the course of my profession, I happen to have become quite familiar with the laws of the State on the subject of charities. As the rule has been settled in our courts, and very deliberately settled after a contest of several years, a gift to public purposes, by which I mean a gift to any educational, literary, scientific, benevolent or charitable purpose whatever, is impossible, unless it is sustained by some legislation of the State. It is now the rule that at common law these gifts fall to the ground, all of them, without discrimination. They are sustainable only upon the legislative power, which power can be exerted either in special charters or in general laws for the formation of charitable corporations. It may occur to gentlemen that general laws may meet every case. We have a general law now, under which any charitable corporation can be formed—and when I use the word "charitable" I mean all these public institutions. In the eye of the law, and when lawyers speak of "charities" they mean public gifts, for any public purpose whatever They are all classed, in the judgment of the law, under the generic name of charities. We have, I say, a general law, under which charitable corporations can be formed. But there is a property limitation in that law, which is inconvenient, and according to which the larger charities which are sometimes created and endowed by individual benevolence, cannot be brought into existence at all; and I suppose the Legislature in passing general laws will always maintain that property limitation. I will mention what the limitation is now. You cannot form one of these charitable corporations under the general law with a capacity to take more than seventy-five thousand dollars of estate. That is about the limitation. Now, this is a wise *mortmain* policy. All legislative charters, all general acts of legislation in favor of charitable gifts, contain the *mortmain* principle; that is, the principle limiting the amount of property which the institution can take. Charity and *mortmain* in law, always go hand in hand, each attending the footsteps of the other. I do not suppose that the Legislature would ever enact general laws under which large charities can be endowed; because that would leave it to the discretion of any individual to give an immense estate for purposes over which the Legislature would have lost control. By special act of legislation that particular charity might not be approved. Therefore, in these general laws we now have, and I apprehend we always ought to have, this property restriction. Now, under this system of law the Vassar College never could have been created; the Cornell University never could have been created. There is not a college in the State that could ever have been brought into existence under these general laws, because their endowment exceeds vastly the sum or the value permitted by those general laws. It sometimes happens—and not very unfrequently—that a benevolent individual of great wealth dies, leaving a last will and testament to endow a charity, and leaves a million or two millions of dollars for some favorite charity of his own. Mr. Rose, of New York, left an estate of a million and a half of dollars. We all know what Mr. Cornell has done. We all know what Mr. Vassar has done. The same thing may be done by other individuals. There is no law in the State to sustain their particular schemes. Their charities cannot come into existence under a general law, because the Legislature never would and never ought to pass general laws by which institutions can be endowed with those

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immense sums. I think, therefore, that our Constitution should be so left that the liberal and wealthy can go to the Legislature and ask for a special charter, permitting them thus to create or endow their charities. I have only to say further that this kind of legislation is not within the evil intended to be checked and guarded against by this Constitution. The precise evil is those applications from private trading pecuniary corporations, for individual advantage and benefit, with which the Legislature is so much besieged, drawing around the Legislature all the influences of corruption. We have heard a great deal about that. Now, these applications for the chartering of charities are not attended with any of those influences. They do not appeal to the lobby. They do not appeal to any corrupting influence whatever; and they are rarely, if ever, opposed in the Legislature. They do not occupy the time of the Legislature. They do not fill the volumes of the statute laws. They are not, in any sense, as I conceive, within the evil which we intend to guard against in this Constitution. I, therefore, commend this proposition to the Convention, and ask that the article may be reconsidered, to the end that literary, charitable, benevolent and educational institutions may be brought within the exception.

The question was put on the motion offered by Comstock, and it was declared carried.

Mr. COMSTOCK—I now propose to insert in the third line, after the word "municipal," these words:—

The PRESIDENT—Does the Chair understand this to be a new proposition, not offered before? Has the gentleman, at any prior time in Convention, offered this proposition?

Mr. COMSTOCK—No, sir, I have not.

The PRESIDENT—It then comes under the head of amendments generally.

Mr. COMSTOCK—I propose to insert in the third line of the article as proposed, after the word "municipal," the words "literary, scientific, charitable and benevolent." It will then read as follows:

"Corporations may be formed under general laws, but they shall not be created, or their powers increased or diminished, by special act, except for municipal, literary, scientific, charitable and benevolent purposes."

The question was put on the amendment offered by Mr. Comstock, and it was declared carried

The question recurred on the adoption of the article as amended, and being put it was declared carried, and the article was again referred to the Committee on Revision.

Mr. FOWLER offered the following resolution:

"WHEREAS, It is impossible for the janitor of this building to attend to making the fires and feeding the same in heaters necessary to warm this room and the rooms occupied by the attaches of the Convention, as the said janitor is necessarily engaged in performing his regular duties connected with the various city offices located in the building, therefore,

"*Resolved*, That William N. Lombard be and he is hereby appointed to make fires and attend to the same necessary to warm this room and to hoist and lower the flag on this building at the commencement and adjournment of each session of this Convention, and that he receive three dollars per day for each and every day so employed."

The PRESIDENT—This resolution is referred to the standing Committee on Contingent Expenses, under the rule.

The Convention will now resolve itself into Committee of the Whole on the report of the Committee on State Prisons and the prevention and punishment of crime.

Mr. GOULD—The report of this committee on the subject of State prisons and the prevention and punishment of crime, is one which is decidedly interesting to all the citizens of this State. It will be observed by every one that is here that we have not only not a quorum but only half a quorum; and whether it will be consistent to discuss a question of so much importance and magnitude as this with so few members present, it will be for the Convention to decide. It will be recollected that when the report of the Committee on Education was discussed, there was an equally small number present, and the result was that the article which presented the scheme of the Committee on Education was decided and voted upon by men who had never heard the argument at all and had not the benefit of knowing the ground upon which the committee acted. I suppose there will be the same result if we go on with this discussion. If there is any other committee desirous of going on with their report, I should be glad to have it substituted. I would inquire of the chairman of the Committee on Indian Affairs if they are ready to report?

Mr. VAN CAMPEN—They are not ready.

Mr. GOULD—I submit entirely to the views of the Convention, but I could not allow it to pass without bringing the matter distinctly before the Convention.

The PRESIDENT—No motion being made the Convention will resolve itself into Committee of the Whole.

The Convention resolved itself into Committee of the Whole on the report of the Committee on State Prisons and the Prevention and Punishment of Crime, Mr. S. TOWNSEND, of Queens, in the chair.

The SECRETARY proceeded to read the first section as follows:

SEC. 1. There shall be one superintendent of prisons, to be appointed by the Governor, by and with the advice and consent of the Senate, to hold his office for seven years. He shall have the charge and superintendence of the State prisons, and the supervision, with power of visitation, of all other places for the custody of persons charged with or convicted of crime. His compensation shall be fixed by law.

Mr. C. C. DWIGHT—I move, Mr. Chairman, to substitute for the first section of the majority report the first and second sections of the report which I had the honor to make, which will be found in document No. 123.

The SECRETARY proceeded to read the substitute offered by Mr. C. C. Dwight, as follows:

"SEC. 1. There shall be a board of mana-

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gers of prisons, to consist of five persons to be appointed by the Governor, by and with the advice and consent of the Senate, who shall hold office for ten years, except that the five first appointed shall, in such manner as the Legislature may direct, be so classified that the term of one person so appointed shall expire at the end of each two years during the first ten years; and vacancies in the office afterward occuring, shall be filled in like manner.

"Such board shall have the charge and superintendence of the State prisons, and shall possess such powers and perform such duties in respect to the county jails, the local or district penitentiaries and other penal or reformatory institutions within the State, as the Legislature may by law impose upon them."

Mr. C. C. DWIGHT—It will be observed by members of the committee who have examined the two reports which are now before them, that they differ only in respect to the organization of the central controlling and supervisory power, the power which is to exercise the supervision of the State prisons, reformatories and penal institutions of the State. There was entire unanimity, Mr. Chairman, I think I may be permitted to say, in the Committee on State Prisons as to the necessity of a change in the present management of our penal institutions. As gentlemen of this committee are aware, the supervision of those institutions, by the Constitution of 1846, is committed to a board of three inspectors, who are elected by the people of the State, one every year, to hold office for a term of three years. It was considered by all the members of the committee on this subject that a radical change was necessary in the constitution of this central supervising power. Practically, sir, it is conceded that inspectors of State prisons are nominated by political conventions, generally at the end of the session, often when a large number of the representatives of the party constituting such convention, having finished the principal business which has called them together, have departed for their homes. The prevailing consideration which seems to have governed in the designation and nomination of those gentlemen has often, if not usually, been to balance up the nominations between different sections of the State; and the result has been, sir—I think I may say it, and speak within reasonable limits—the result has been that the State prisons, the penal and reformatory institutions of this State, have been committed to the general control, guidance and management of a board of second or third rate politicians, who have been put in office to reward them for political services, and who have possessed no knowledge of the duties which have been devolved upon them, and few of the requisites or qualifications for the discharge of those duties. I know, sir, that there have been honorable exceptions to this rule, but I think the observation of all who have observed this matter has taught them that those exceptions have been as rare as they have been honorable. This matter of the management of State prisons is a matter, as the chairman of the committee [Mr. Gould] has remarked this morning, which interests, deeply and largely, all the people of this State. It is not a mere question of economics; it is not a mere question whether the balance-sheet of the finances of the State prisons shall show a balance upon the side of the State or against it at the close of the year. It is a great question of morals, sir. It is a question that deeply and vitally affects the good order of society and the progress of civilization and morals in the State. As I said in the outset of my remarks, the committee differ only upon the question, how shall the central supervising power be organized? The majority of the committee has reported in favor of a single person to be denominated "the superintendent of State prisons," to whom shall be given the power which is described in the majority report. I desire to call the attention of gentlemen of the committee to the power which would be vested in this one man, if the report of the majority of the committee should be adopted. It will be seen that that one man will have the charge and superintendence of State prisons, with supervision and powers of visitation of all other places for the custody of persons charged with or convicted of crime. It will be seen that he shall appoint one warden for each State prison of the State, that he shall appoint a clerk—I am mistaken in respect to the appointment of the warden—but that he shall recommend to the Governor a warden, and shall appoint a clerk, a chaplain, and a physician for each of the State prisons; that he shall possess such powers and perform such duties in respect to county jails, local or district penitentiaries, and other penal and reformatory institutions, as the Legislature shall by law prescribe. I submit, Mr. Chairman, that the power which would thus be intrusted to this superintendent of State prisons, and that the responsibilities and the duties which would thus be devolved upon him are too great to be intrusted to or devolved upon any one individual. I believe that the committee were unanimous in the opinion that each of these State prisons should be under the control of a single head, and that that head should be the warden of the prison; and although the majority and the minority differ in their recommendation as to the mode of appointment of this warden, yet they agree substantially as to what his powers, his duties and his responsibilities shall be. This warden, sir, is, by either of these reports, to have the entire charge of his prison, including the enforcement of its discipline, and the appointment and removal of all his subordinate officers. When I say subordinate officers, I mean all those whose duties relate to the police of the prison. In that respect, sir, the committee agreed. The first question to which I desire to call the attention of this committee is, how shall these wardens, who are to possess this great, this weighty responsibility in respect to the management of these important institutions—how shall these high executive officers be appointed? The majority of the committee, sir, recommend that these wardens shall be appointed by a single superintendent. I ask the committee whether the parallel of such a power exists anywhere under the Constitution of this State, or of any other of which gentlemen have knowledge; where, a single individual, without the advice or

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consent of any consulting body, has the appointment of men whose powers and responsibilities are as great as those which are devolved upon the wardens of these several State prisons. Mr. Chairman, the principle which governs me in this matter is this: that each of these State prisons should be under the control of a single, responsible head. The chairman of the Committee on State Prisons, in the discussions of this question before that committee, as I presume he will do in the discussion of the question here, was fond of citing those whom he addressed to the example of the Albany penitentiary, an institution which stands out pre-eminent among similar institutions in the country, as an example of an efficient, wise and successful management. Now, sir, I desire to make that my example, so far certainly as its prudential, its financial management and its strictness of discipline are concerned. There is no institution in the country which excels it; and I desire that each of the State prisons of this State shall, so far as possible, be conducted upon similar principles and to like results; that each of the State prisons of this State should, if it were possible, be made to rank with the Albany penitentiary in efficiency and perfection of discipline and management; and for this purpose it is that I would have at the head of each of these institutions a man capable of enforcing such a management and such a discipline. The question is, How shall such a man be found? How shall he be selected? How shall he be appointed? How shall he be held to that responsibility which is necessary? And how shall he be suspended or removed from office if he prove incapable or unfit? The majority of the committee say that all that shall be done by a single superintendent. I say, sir, that, for the proper selection of the men who are to have the charge, each at the head of one of these State prisons, you require more than the wisdom of a single man. You require a body of councillors who shall have knowledge of these matters, and who shall be able wisely to make these selections. I have again fallen into error, Mr. Chairman, in assuming that these wardens are, by the majority report, to be appointed by the superintendent of State prisons; but what I have said applies equally to the mode of appointment which is provided by that report. The majority report provides that these wardens shall be appointed by the Governor, by and with the advice and consent of the Senate. My objection to that is this: that the Governor of this State is not supposed to have and cannot be supposed to have—

Mr. AXTELL—Will the gentleman allow me to call his attention to the fact that the warden is to be appointed on the recommendation of the superintendent of prisons.

Mr. C. C. DWIGHT—Very good. It amounts to this, simply, that the warden of each of these prisons is to be designated or recommended by the superintendent of prisons; and that upon such recommendation he is to be appointed by the Governor by and with the advice and consent of the Senate. To that mode of appointment the objection that I was making applies with equal force as if he were appointed by the superintendent of State prisons directly and finally. The designation is intrusted to the superintendent of State prisons. The appointment is to be made by the Governor, and that appointment is to be approved and confirmed by the Senate. Now I say, sir, that that amounts to precisely the same thing as if the appointment was made by the superintendent of prisons, or else there is no advantage in the provision which the majority of this committee recommend. If the Governor and the Senate are to appoint whom they will, if they are to disregard the recommendation of the superintendent of prisons, then I say that the appointment is to be made by an authority which is not and which cannot be expected to have any knowledge of the subject to which its action relates. They have had no experience; the Governor of this State is not supposed to know who are the men who will make capable and efficient wardens of the State prisons. If the appointment is to be made by the superintendent of State prisons alone, and upon his own responsibility, that is, if the selection is to be made by him and it is to be merely confirmed by the Governor and the Senate, then the objection which I was making applies in full force, that you put that whole responsibility upon a single individual. Now, sir, there is a further objection. How and to whom are those wardens of the State prisons to be held responsible? The committee will please to bear in mind that both these plans contemplate that the warden of the prison shall be the one responsible head of it, shall have the sole management of it, subject to the supervision and advice of the central power, that he is to appoint all the officers who have to do with the police and discipline of the prison. How are these wardens to be suspended or removed in case of malfeasance or inefficiency in the discharge of their duties? The eighth section of the report of the majority or the committee provides that the superintendent of State prisons may suspend the wardens from office, and the Governor may remove them on the complaint of the superintendent, after having been furnished with a copy of the charges against them and after giving them an opportunity to be heard in their defense. They may then be suspended upon the single will of this superintendent of prisons; and they may be removed, and can be removed, only by the Governor, after a hearing by him upon written charges to be preferred by the superintendent of prisons. Mr. Chairman, I claim that powers, and duties and responsibilities as vast as these which by this article would be devolved upon this central power, are not to be discharged wisely, and efficiently, and well, by a single individual. This matter of the management and control and government and discipline of State prisons, is a great and leading branch of the science of morals. The whole question of the reform of criminals and the prevention of crime, is involved in the correct management of the penal institutions of the State. I ask whether there is to be found, and where there is to be found a single man—where is the man whom any member of this committee would name as the man upon whom should be devolved such powers and responsibilities as are involved in that office? Now, Mr. Chairman, there has been for a long time in the State of New York a vol-

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untary association of learned, able and philanthropic gentlemen, under the name of the prison association of the State of New York. That association consists of such men as Wm. F. Allen, the present Comptroller of the State of New York, John T. Hoffman, the present mayor of the city of New York; Dr. Francis Lieber, the well known scholar and publicist, of New York city; Professor Theodore W. Dwight, a member of this Convention; the honorable gentleman from Columbia, the chairman of the Committee on State Prisons; Gaylord B. Hubbell, of Westchester county, some time since a member of the Legislature of this State, and devoting himself in that capacity with the utmost wisdom and enlightenment to the matter of the management and organization of the prisons of the State, and for some time a warden of the State prison at Sing Sing, and as I have repeatedly heard the gentleman from Columbia [Mr. Gould] say, among the most efficient, able and excellent wardens who ever held that office in the State of New York; Dr. John H. Griscom, one of the most celebrated and learned physicians and surgeons in the city of New York, and Rev. Dr. E. C. Wines, the secretary of the association; such men, sir, constitute that association. If I am not mistaken, the honorable gentleman from Ontario [Judge Folger] is also a member of that association. At any rate he has had to do with the perfecting of the plan which is recommended to us by the committee of that association. Now, sir, the gentlemen whose names I have just brought to the attention of this committee, as members of this association, were appointed some time during the last year a committee to prepare and submit to this Convention a memorial upon the subject of the organization and management of the State prisons. These gentlemen, it will be remembered, have devoted their time, their attention, their wisdom, and their benevolence to this subject. They were appointed a committee to prepare and submit to this Convention a memorial upon the subject. They did so, and submitted an article which will be found in document No. 146, commencing on the first page, as the article which they unanimously recommended to this Convention to be adopted for the organization and management of State prisons. With the permission of the committee I will read that article as it is offered there:

"There shall be a board of governors of prisons, who shall have the charge and superintendence of the State prisons, and power to appoint the wardens or principal keepers, the chaplains, clerks and physicians thereof, and the power of removing the officers above named, and the other officers in the same; but such removal shall be for cause; and the accused shall, in all cases, be entitled to be informed of the charges against him, and to be heard in his own defense. Such board shall also have the superintendence, with power of visitation, of all institutions for the reformation of juvenile delinquents and the prevention of crime. It shall consist of five persons, to be appointed by the Governor, by and with the consent of the Senate, who shall hold office for ten years, except that the persons first appointed shall, in such manner as the Legislature may direct, be so classified that the term of one of the persons so appointed, shall expire at the end of each two years during the first ten years. Any vacancies in office, afterward occurring, shall be filled in the same manner. They shall receive such compensation as shall be established by law."

The memorial recommending this article was signed by this entire committee, whose names I have read—I shall be corrected in that respect by the chairman of the Committee on Prisons if I am in error—It was, as I understand it, signed unanimously by this committee with the exception of Mayor Hoffman, who was absent from the city or from the meeting at which the memorial was signed, and he telegraphed to the committee or to a member of it who was at Albany, that he agreed to the article with the exception that he was opposed to any compensation being provided for this board, and that he would cheerfully sign the memorial if in that respect it should be altered as he recommended. That recommendation of Mr. Hoffman, that no compensation should be provided for this board, was concurred in, as I understand, by all the committee, and, sir, it will be found that the plan which I have submitted in the minority report embodies all the features of the article proposed by the committee of the prison association, with the feature recommended by Mayor Hoffman. It will be seen that the third section provides:

"Such board shall from time to time, elect one of their number secretary thereof, who shall perform such duties as the Legislature or the board shall prescribe, and shall receive such salary as the Legislature shall determine; the remaining members of the board shall receive no compensation other than reasonable traveling and other expenses, while engaged in the performance of official duties."

Mr. Chairman, I claim no credit whatever for the plan which I have submitted to this Convention, except the credit of having perceived the excellencies of that plan, and having embodied it in my report. Beyond that the credit is due to the gentlemen whose names I have read as members of the committee of the prison association. The article which I have reported differs from that submitted in the memorial, in the following particulars: It embodies the idea of service, by the board, without compensation other than expenses, and it provides for the designation by the board of one of their number as secretary, who shall receive a salary. I have also modified the article in respect to its arrangement, and in other unimportant particulars. It will be observed, perhaps, with some surprise by members of this committee that the honorable chairman of the Committee on State Prisons [Mr. Gould] is one of the committee of the prison association who devised the plan which is submitted by that association and substantially embodied in my report, and who signed the memorial which recommended the same to this Convention. I probably shall not err or commit any breach of courtesy in saying that my honorable friend, the chairman of the committee [Mr. Gould], has said to me on several occasions that he has never changed his mind in regard to the excellence of

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the plan thus proposed; that he still, as then, regards it, as the best possible plan, but that he has yielded his preference for that plan in favor of the one which he has here proposed upon the grounds of expediency, or, perhaps I should say, of practicability—that is to say, that while he believes the plan recommended by himself, in connection with the other members of the prison association, to be the best, he feared it would not be adopted by this Convention, and that he has therefore submitted to the Convention a plan as nearly like it as any which he believed likely to be adopted. I believe I correctly state the position of the gentleman in that respect.

Mr. GOULD—I will merely state that my own individual plan would devolve upon a single officer the whole supervision of the criminal administration of the State, to be aided in one department by a board of State prison inspectors, and in the other by a board of police inspectors. But inasmuch as the majority of the committee were, and I believe a majority of the Convention are, opposed to any such central power as that embracing both these departments, I was driven to the necessity of accepting a divided administration.

Mr. C. C. DWIGHT—I am aware, sir, that the plan originally submitted by the gentleman in the Committee on Prisons embraced a proposition for a single head over district attorneys, county jails, State police, State prisons, and all. What I referred to was the gentleman's recommendation of the plan of the committee of the prison association, which I have embodied in the minority report. The gentleman has more than once said to me that in his opinion that was the best plan that could be devised.

Mr. GOULD—I meant the best plan in connection with the other, which I have just described.

Mr. C. C. DWIGHT—Sir, the gentleman speaks—and I take that to be the burden of his argument upon this question—of the necessity of unity of management in our State prisons. Now, sir, I claim that a proper unity of management is contained in the plan embraced in the minority report. I claim that the State prisons of this State, three in number, and which should be increased to six (the chairman of the committee [Mr. Gould] strongly urges that not less than three new ones should be established immediately); that each of these prisons is an institution by itself, separate and distinct from the others; that it has no connection whatever with any similar institution in the State; that these State prisons are not parts of a system; that they are separate and distinct, without connection with each other, either financially or in respect to discipline and management. My position is that each of these institutions should be put under a single responsible head; that unity of responsibility is best attained by the appointment of a single head to each institution, who shall be absolute in his sphere, having the appointment of all his subordinates; and that he shall be held to such responsibility by an authority capable of judging of the manner in which he performs his duties. Such is my position in regard to this question. In the first place, we need for the appointment of these wardens or heads of the several prisons a board which shall be enlightened, which shall be instructed, and which shall be experienced in regard to these matters, which shall be capable of selecting from among the candidates for these positions, or from among those who are not candidates, but who ought to be put in these positions, men of fit character and capacity for the discharge of the duties devolved upon them. For that purpose the committee of the prison association recommends a board of five members to be appointed by the Governor, by and with the consent of the Senate, who shall be appointed for ten years, the board to be classified, and one member to go out at the expiration of every two years. The further provision in regard to that board, contained in my report, is that the members shall serve without compensation, except their reasonable and necessary traveling and other expenses when in the actual discharge of their official duties. It may be said, sir, as it was said in regard to the proposed board of education, that men cannot be found who will devote themselves to the care of these important interests of the State without compensation other than such as is here provided. But, sir, I am authorized to say, that those men can be found, that such men stand ready to perform the service. The chairman of this committee [Mr. Gould] knows men, and can name them, who stand ready to assume these duties and to discharge them—men of the largest experience, of the utmost enlightenment upon these questions—men of philanthropy, of education upon all these questions and interests involved, who will serve with no compensation other than is here provided. There will be of course a bureau of prisons, to be established at the capital, a central office. There must be somebody whose whole time will be devoted to the charge of this office and the discharge of the duties connected with it. And that is provided for by the provision that the board shall designate one of their number as a secretary. This officer will be *totus in illis*, he will devote his whole time to this matter, and will receive such compensation as the Legislature shall determine. That compensation should be liberal, should be ample, and such as will secure and compensate the services of one of the best men in the State. But, sir, aside from that, aside from the services of the secretary thus to be designated, there will not be a large portion of the time of this board required in the discharge of their duties. It will be seen, sir, that their first duty will be to select their secretary and to establish his office at the capital. Then they will have to designate the wardens of the several prisons, and that is a very important duty. Their next duty will be to consult upon and devise such a system of discipline and management, such a system of employment and labor in these prisons as shall commend itself to their wisdom. These things having been accomplished, their whole duty is accomplished, with the exception of the visitation of the prisons during the year. These institutions are to be managed and the system administered by the wardens at the head of each of them, and all that will be required of this board will be to see that the wardens discharge their duties faithfully and well—that they fairly administer the system

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devised and prescribed by the board. It is expected, sir, and we are warranted in expecting, that the gentlemen who take this position at the hands of the Governor, would be such men as those who constitute the prison association—men like William F. Allen, Francis Lieber, John T. Hoffman, Theodore W. Dwight, John Stanton Gould, Gaylord B. Hubbell and John H. Griscom. The services of such men can be obtained for no compensation other than is provided in the minority report (and the moment that a salary is attached to the office, the appointment will be sought and obtained by place hunters and politicians). There are grave and important questions to be submitted to this central power. There is the question of the employment of convict labor, including the continuance or discontinuance of the contract system, the whole responsibility of the appointments, and the whole question of the discipline of the prisons; the great interests, too, of the State in the reformation of criminals and the prevention of crime, will be largely within the scope and purview of this board, or of this central power. I ask gentlemen whether they would devolve such responsibilities upon a single individual, or whether they would not rather intrust them to a board of wise and careful councillors? The fourth section of the report of the minority of the committee relates to the appointment of the warden, and the appointment by the wardens of their subordinates. I am not certain but that the provisions of this fourth section are rather matters for legislation than for constitutional provision. If so, I should be content to see it stricken out. The point which with me is essential and important is this, that the central supervisory management and power over the prisons and penal institutions of the State should be properly organized, and that power being properly organized, I should be content to leave it to the Legislature to prescribe their powers and duties, and the powers and duties of those officers who shall be appointed by them. With these remarks as an introduction to the report of the minority of the committee upon this question, which I have moved as an amendment, I yield the floor.

The CHAIRMAN—Will the gentleman inform the Chair whether he moves the whole article as a substitute?

Mr. C. C. DWIGHT—My motion was to substitute the first and second sections of the minority report for the first section of the report of the majority of the committee.

Mr. GOULD—In view of the small number of delegates present, I move that the committee do now rise and report progress.

SEVERAL DELEGATES—No, no.

Mr. GOULD—Then I withdraw the motion if it is not considered desirable that we do now rise. The theory of the majority of the Committee on State Prisons is, that all the beneficent intentions of the State in the establishment of our prisons will be best promoted by committing their custody and government to a single person, carefully and intelligently selected, with reference to his ability for the discharge of the duties of his position, to be aided by the advice of a competent board of local assistants. The theory of the minority is that these functions can be and will be better performed by a board of five persons. The questions before the Convention, then, are, 1. Ought any changes to be made in the existing system under the present Constitution? 2. If such change ought to be made, which is the wiser plan of making it? Shall the idea which underlies the report of the majority, or that which is contained in the report of the minority, be adopted and sanctioned by the Convention? These are the distinct issues presented for the consideration of the Convention, and they are those which I propose to consider. Every argument rests upon postulates. There must be some common ground of agreement between the parties or argument can issue in no profitable results. I assume, sir, in the full belief that it will be readily admitted on all sides: 1. That change for its own sake is always undesirable, and that the existing constitutional provisions respecting prisons should not be changed unless such change can be shown to be necessary. 2. The prisons should be penal in their character; they should be a terror to evil doers; they should be objects of dread to the criminal community. 3. They should be reformatory in their character—men should leave them better men than they were when they entered them. 4. They should be self-supporting. This condition is of course strictly subordinate to the other conditions, but when men who have been depredating unlawfully upon society for years are at length convicted, it would seem to be eminently just and right that they should be compelled at least to support themselves if not to repay some of the taxes which they have levied upon society. If these postulates are admitted, it will be necessary for us to inquire: 1. Whether the system established by the present Constitution does deter men from the commission of crime. 2. Whether it does have a tendency to make the prisoners better men—by enlightening their ignorance—by strengthening their wills so as to enable them to resist temptation, by purifying and elevating their affections? 3. Does it relieve the tax payer by making the prisons self-supporting—by the profitable employment of the men, by the faithful collection of the income, by the economical expenditure of the income, by the convenient arrangement of the interiors, and by the fidelity and vigilance of the officers? If these questions can be answered affirmatively with respect to the present system it ought to settle the question of its continuance. If on the contrary, we are compelled to answer them negatively, necessity is laid upon us, and as faithful public servants we are bound to devise some better system. I propose to consider these questions in detail, and, 1. To furnish an answer to the question whether our prisons as at present administered do really deter men from the commission of crime, and whether they are a terror to evil doers. We cannot adduce evidence on this subject from statistical tables, or to any great extent from official statements which are conclusive on the subject, yet, notwithstanding this deficiency, we are not left without pretty conclusive evidence which may safely guide our judgments to a correct conclusion. The very last report (1867) of the in-

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spectors assures us that very many of the prisoners who are discharged, deliberately commit crimes in order that they may be sent back to prison. The food and raiment and shelter which they obtain there are so much more comfortable than that which they can obtain when at liberty that it outweighs, in their estimation, the restraints upon their liberty, and the enforced labor which are the incidents of their residence there. This testimony of the inspectors given during the present year is confirmed by much other evidence to be found in the pages of previous annual reports. The wardens, the chaplains and the physicians of those institutions concur with remarkable harmony in telling the same story.

Mr. FOLGER—Does the gentleman mean the State prisons or county jails?

Mr. GOULD—The State prisons.

Mr. FOLGER—I can understand how the fact could be so with reference to the county jails.

Mr. GOULD—In addition to the testimony afforded by these official documents we have the oral evidence of those ministers of the law whose positions enable them from the widest field of observation to form the most authentic and accurate conclusions upon the question. Sir, I have sought diligently for the opinions of our criminal judges, district attorneys, chiefs of police and sheriffs upon this matter, and I can assert with the utmost confidence that they do not believe that our prisons do deter men from the commission of crime. They answer me, and they will answer you if you ask them, that the criminal thinks nothing of his punishment when he is planning his nefarious act. If he can only get the jewels, the plate, the cash or the bonds into his possession, he snaps his fingers at the punishment; the prospect of it will not have the weight of a feather in his mind when put into the balance with the *eclat* which his exploit will give him among his associates and the pecuniary profit that he reaps from it, and the rude and licentious orgies which that profit enables him to enjoy. Sir, every member of this Convention is a witness in this matter. There are several who have held the position of sheriff, and others who have held the office of district attorney. I ask each member to appeal to the testimony of his own consciousness, whether he has ever heard any strong expressions of dread of punishment in our State prisons? And if the answer is, as I suppose it must necessarily be, I think, in connection with the other evidence which has been adduced, we are entitled to conclude with a good degree of assurance that our prisons as now managed are not a terror to evil doers, and they do not act adequately in the repression of crime.

Mr. KINNEY—I would ask the gentleman if that is not more due to the courts which determine the penalties, than that the punishment is not severe enough.

Mr. GOULD—I think very likely that has something to do with it. At all events, the fact is such that the criminal population of the State do not dread the punishment or are not deterred by it from the commission of crime by any punishment which is inflicted. I now proceed to my second point, and I ask, do our prisons reform the prisoner? Does he come out of them a better or a worse man than he was when he entered them? This, sir, is a question in which the people of this State have a deep and abiding interest. We turn out every year one thousand convicts from our State prisons, and two thousand from our penitentiaries, and from sixty to eighty thousand from our common jails. It would be a great pecuniary advantage to the State if these men could be returned into its bosom to join the industrial classes upon which all its wealth depends. It would be a great moral gain if they came back to it "clothed and in their right minds," educating their children and training them up to virtue and to industry. Now, sir, I have read over carefully all the reports of successive boards of inspectors from the beginning, and I am unable to find any traces of evidence that these prisoners are really reformed except in a very few isolated instances. Nor am I able to find that any earnest, comprehensive scheme has been at any time adopted having this end in view. None of the successive boards who from time to time, have been invested with the government of our prisons, have made any resolute efforts to ascertain the facts upon which all theories for the improvement of character must be founded. They have attempted no clear analysis of human character, nor adequate investigation of the secret springs which control human conduct. In a word, there are none of the evidences of intelligence and zeal directed to the accomplishment of this most desirable end, which must be the basis of all success in this direction. What efforts are made to enlighten their ignorance? There is a chaplain appointed for each prison. In the prison at Sing Sing there are now upward of fourteen hundred convicts in confinement. A large proportion of these men are as wholly ignorant of religious truth as the heathen in Africa or in New Zealand, the only knowledge or conception that they have of heaven, or hell, or God, or Christ, is as objects of blasphemy. Now, sir, what are the facts in regard to the case? We judge of a building that it is not a mill if we find no water-wheel, no steam power, and no stones for grinding. And we say that the absence of machinery is sufficient evidence that it is not a mill. We say that a building cannot be a blacksmith shop if we find no bellows and no anvil in that shop. And, if we find in our State prisons that there is no machinery, no plan, no system whatever for the reformation of a prisoner, we can infer, pretty readily, that there will be no reformation there. Let us inquire into this matter. The prisoners go there, almost all of them, exceedingly ignorant and exceedingly debased. They have no idea of moral law or of any kind of law, except the law which is administered by the judge and the sheriff. They are in a state of almost Egyptian darkness. Why, sir, I have put the question to over four thousand prisoners whether they could read or not, and about half of them said they could read, and the other half admitted that they could neither read or write. I put the test to hundreds who said they could read, and a few of them certainly could read very well. And the test that I put was the simple phrase in the New Testament: "There went out, at the time of Cæsar Augustus, a decree that all the world should

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be taxed?" Not a third of these men were able to read that easily and fluently. They would stammer and they would spell a very considerable part of the words. And those who were able to read it, when I would ask them the question who was Cæsar Augustus, I do not think I met with twenty out of the four thousand who had any definite idea of who Cæsar Augustus was, whether he was a Greek, a Roman, an Englishman, an Hungarian, or an Irishman. I have frequently put the question as to what was meant by taxing. I recollect the answer of one young man, and it was this: "When a cove prigs a wipe and somebody else sees him and goes and tells him, that is taxing him with it." [Laughter.] That is the idea he had derived from that word; and that gives you something of an idea of the kind of information which is derived from the reading of those who actually pretend to read and write. You will see even that knowledge is of no effect in making them better men, or enabling them to perform the duties of society. Well, sir, their knowledge of morals and religion is still lower than this. I have frequently asked men whether they knew what God was. They generally said they did, but when I came to ask them in regard to the attributes of the Deity, I found their ideas exceedingly vague. One replied in answer to this question with entire gravity, "Oh, yes, I have often heard of him sir; he damns folks."

Mr. FOLGER—I would ask the gentleman [Mr. Gould] if that is different from the current theological ideas?

Mr. GOULD—I must refer the gentleman to the theologian.

Mr. FOLGER—I have heard that idea inculcated in the pulpit all my life.

Mr. GOULD—As another illustration, I will state that when I have asked men about Jesus Christ, the name has been familiar to them, and I have always understood from them that Jesus Christ was somebody that was good. I asked one man if he knew who Jesus Christ was, and he said "He was a very good man, sir." And I asked him "Where did he live, and what did he do?" He said, "Sir, I believe he was a Sandy Hook pilot, who had prayers in his cabin every Sunday." This is a fair sample of a very large number of the convicts; and to encounter this vast mass of Egyptian spiritual darkness we have just one man! Suppose the chaplain works steadily for twelve hours in the day, this will amount to 5,040 minutes in a week, which, divided among 1,400 men, amounts to three and a half minutes to each man in a week. The disproportion between means and ends, great as it appears from this statement, is in point of fact much greater. The chaplain is required to read all letters written by the prisoners to their friends and all that they receive from them. He writes the letters which are sent by the prisoners who are unable to write themselves, which will average six in a day. His superintendence of this correspondence takes about one-half of his time, which will reduce the amount of time that he can allot to each prisoner to one and three-quarter minutes per week. But this is not all. He is the custodian of the library, and gives out and receives on an average six hundred volumes a week. He takes them from the shelves, registers them in a book, checks them when returned, and re-arranges them on the shelves. There is an average of fifteen persons sick in the hospital, who require and receive special attentions and consolations of the chaplain; sometimes he remains for hours at the bedside of a dying man or a dying woman. Then he is expected to reply to letters of inquiry which are frequently addressed to the prison from other States and from foreign States respecting its methods, its discipline or its statistics. He is by statute directed to keep certain records, which he is required annually to arrange and tabulate for the Legislature. He must compose at least one sermon a week and attend the stated meetings of the ecclesiastical bodies to which he belongs. And, now, when he has discharged all these duties, how much time has he left for the spiritual instruction of each of these ignorant men? Does any one suppose that he will have more than half a minute in a week to devote to each prisoner? The provision for the intellectual instruction of the prisoner is as meager as that for his spiritual instruction. We are told in the eleventh annual report of the inspectors that, "after a thorough and close examination, in no single instance has there been a single case of the re-conviction of those who received the first rudiments of their education in the prisons." This, sir, is a most remarkable assertion. It embodies the experience of eleven years, and it establishes the fact that not one man who had been educated in the prisons had ever again been convicted of another crime. Might it not be reasonably supposed, if these boards were really in earnest, that, like Archimedes they would have cried Eureka, and that all their efforts and all their energies would have been directed to sowing broadcast the seeds which had yielded such precious fruit? But we look in vain, sir, for any such activity on their part. The machinery in operation before this discovery was made was not increased in its amount or quickened in its activity. What was that machinery? Why, all the opportunity the prisoner had to acquire an education was in his cell; the lights are placed in the corridors, it was dim and flickering in the cells located nearest to them, but in those which were most remote, it was very difficult, even for the sharpest vision, to discern the letters of the spelling book. And all the direct instruction that they receive from an instructor does not exceed twenty minutes in a week. If we inquire what plans have been adopted for strengthening the volitions of the prisoners, so as to aid them to resist the temptations to relapse into crime when they shall return again into the world, we are compelled to answer that there are no plans, and no distinct, intelligent efforts to effect this object. If we ask what measures are taken to purify and elevate the tastes and the affections of the prisoners, the same answer must be made. Nothing more is done to accomplish these most important ends in our prisons than there is in our stables and our piggeries. The inspectors, in their report in the year 1846, state expressly that the prisons are "not adapted for reformation." The eighteenth annual report of the inspectors (1866) contains the

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report of Rev. Mr. Ives, the chaplain of Auburn prison, in which he says: "In my opinion, very many more might be thoroughly reformed if the prison was conducted on a somewhat different principle." In another part of the report he says: "Young men and boys being placed to work, march, and constantly associate with older men, who have become hardened in iniquity, and have, perhaps, spent a number of terms in prison, and even glory in their shame, their good resolutions have gradually given way, their hearts have grown hard, and they have gone out of prison schooled for crime." Let us now glance at the evidence furnished by our prison statistics. Incomplete and inconclusive as they are, they at least show positively that a large proportion of the prisoners are not reclaimed. In the year 1864, out of 579 persons who were sentenced to the State prisons, 143 were re-convictions, viz.: 114 were second convictions, 23 were third convictions, 4 were fourth convictions and 2 were fifth convictions. In 1865, 189 persons were sentenced to Sing Sing prison, of whom 42 were re-convictions, viz.: 30 were second convictions, 7 were third, and 5 were fourth convictions. In the same year, out of 457 persons sentenced to Auburn, 93 were re-convictions, viz.: 71 were second, 17 were third, 3 were fourth and 2 were fifth convictions. In the year 1866, 1,952 prisoners were committed to Sing Sing and Auburn prisons, of whom 232 had been previously convicted, viz.: 172 were committed a second, 38 a third, 15 a fourth, 7 a fifth time and upward. The aggregate of these figures shows 3,177 prisoners, of whom 510, or 16 per cent, were known to have been re-convicted. How many of the remainder have been convicted in other States or in prisons in our own State under different names, we have no means of knowing. Now, sir, in view of the very clear and convincing evidence which has been submitted, I can come to no other conclusion, and I believe the Convention can come to no other, than that our present prison system has miserably failed to exercise those reformatory influences which are so greatly to be desired, and which are so indispensable to the security and peace of society.

Mr. BARTO—I would ask the gentleman if the Rev. Mr. Ives, to whom he alludes, is the same gentleman who devotes a good deal of his time in making political stump speeches throughout the State.

Mr. GOULD—I have never heard of him in that connection.

Mr. BARTO—He certainly has been thus employed.

Mr. GOULD—He is a very talented gentleman, but I did not know that he was a stump speaker. He is an excellent preacher, and a very earnest christian.

Mr. BARTO—My idea is, that, had he devoted less time to stump speaking, he could have devoted more time to the prisoners.

Mr. GOULD—That follows, necessarily; I admit the conclusion of my friend. I pass on, now, to seek an answer to the third question which I have proposed, viz.: Whether our system relieves the tax payers by making the prisons self-supporting? I have already said that this matter is of far less consequence than the preceding. If any thing can be devised which will really inspire the criminal population of our State with a salutary dread of the penalty of imprisonment, and shall thoroughly reform those who have passed the ordeal of their discipline, the people will be quite willing to be taxed heavily for their support. But I believe, sir, that pecuniary success will always be a necessary incident of the working of any plan which will accomplish these results successfully. The very fact that prisons filled with young, strong, healthy men, cannot support themselves, is good enough evidence that they must fail in every other department. On the other hand, whenever prisons are made to yield a good revenue it is a good evidence that the training which alone will produe this result, has influenced beneficially, both the heads and the hearts of the prisoners. This board has been in full operation for twenty years. During this long period they have had an average of nineteen hundred men constantly under their control, which is surely long enough to show the real working of the system. Many of these men have been furnished with good capacities; some of them have been rich in special gifts, which if judiciously directed, as business men in private life would have directed them, would have yielded a large revenue to the State. Most of the prisoners have been in the very flower of their youth, and in the full vigor of their strength; they have been just in that condition where they were capable of earning the greatest amount of money.

Mr. GRAVES—I would ask the gentleman, from his acquaintance with prisons, has the reformation which has been attempted in the prisons, been conducted upon the law of kindness or by coercion?

Mr. GOULD—There has been no law—it has been a hap-hazard matter. There has been very little plan about it. Whatever plan there has been has depended very much upon the individual character of the prison at the time. It is of the want of plan that I complain. Now, these men have been committed for long periods of service, as will be seen by the official tables of the annual reports. Assuming that the term of life sentences is twenty years, it will be found that the average term of the sentences to the State prisons is five years, or more exactly, five and one-sixteenth years; this term greatly exceeds the average length of apprenticeships in the State. It is an undoubted fact, which I state without hazard of contradiction, that the average value of the services of these men is two-thirds of what is paid for similar services outside of the prison walls. Notwithstanding all these advantages the average amount received by the State for their services has only been fifty-nine cents per day. The very best men in the prison have only received seventy-five cents a day for doing exactly the same work that men outside were receiving three dollars a day for. The cash paid out of the treasury, and raised by the tax payers, for the support of our prisons over and above their earnings, for the past twenty years, was $2,215,099 43, divided among the separate prisons as follows: Auburn, $294,239.86; Sing Sing, $1,192,904.55; Clinton $727 955.02. The aver-

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age annual cost to the State of each convict, over and above his earnings, has been sixty-eight dollars. The average annual cost of each convict at Auburn has been $21.32 over and above his earnings; at Sing Sing it has been $59 64; at Clinton it has been $88.13. It would be some relief if this large amount should be ascertained to be the result of errors and mistakes which occurred at the beginning of the system, but which had been rectified by subsequent good management. Precisely the reverse is true. Instead of improving by experience the financial management has grown worse and worse, and for the last three years the prisons have depleted the treasury to a greater extent than ever they did before. The amount reaches to three hundred thousand dollars a year.

Mr. BECKWITH—Has not the Clinton prison for a year or two past more than paid its way?

Mr. GOULD—Yes, sir; the inspectors so state. If it be alleged that this terrible deficiency in the earnings of the prisons arises from the inevitable necessities of the case, and not from mismanagement, the answer is ready—that no such inevitable necessity exists. The Albany penitentiary, with far inferior advantages, has yielded a net profit of $98,548.59, while our prisons yielded a net loss of $2,250,000.

Mr. GRAVES—Has not the cost of the support of the prisoners at the Albany penitentiary been defrayed by each county paying the board of the prisoners sent from the county?

Mr. GOULD—Not to any thing like the amount of difference shown. The counties pay an average of one dollar and twenty-five cents a week; but it must be remembered that a considerable proportion of the prisoners are committed for ten days, and they are of no benefit whatever, in a financial point of view, and they offset whatever gain there might be from the payment of the one dollar and twenty-five cents a week for prisoners from other counties.

Mr. GRAVES—They get that in addition to the labor of the prisoner.

Mr. GOULD—But it must be borne in mind that the greater portion of the prisoners are committed for not over three months. A man can hardly learn a trade so as to earn much during that time. While our prisons have been drawing increasing sums from the treasury, the penitentiary has been paying increasing sums into the treasury. While the management of our prisons has been growing worse and worse, the management of the penitentiary has been growing better and better. While our prisons have drawn from the treasury $300,000 a year, the penitentiary paid into the treasury, of net earnings, in 1864, $20,373.45; in 1865, $21,380.04; in 1866, $24,412.49. It cannot be said that our deficiencies have been compensated by superior treatment of the prisoners. Most of the members of this Convention have seen the penitentiary with their own eyes, and know that the prisoners are well clothed, fed and lodged, and that they are not taxed beyond their strength. The superior humanity of the system followed at the penitentiary is fully established by the statistical tables. The average number of deaths in the State prisons annually for the last twenty years is thirty-five, or one death to every fifty-five persons. During a similar period sixteen thousand seven hundred and seventy-four persons have been received into the penitentiary, of whom only seventy-four have died, which is less than one-half per cent of the whole number, or one in two hundred and twenty-seven.

Mr. FOLGER—Has the gentleman also made an average of the length of time during which the prisoners were incarcerated in the penitentiary? As some were only put in for five or ten days, they could hardly have time to get sick and die if they were put in in a state of health.

Mr. GOULD—The average is found in this way: the average number of persons in the penitentiary all through the year is taken, and the average number of persons in our State prisons. I do not see that it can make any difference in that way. Forty-three of these seventy-four deaths occurred in the single year 1866, when small pox and typhus fever were brought into the institution by the prisoners from Washington. Deducting these from the whole number, the remainder shows a ratio of deaths which is very small indeed, and which compares very remarkably with the ratio in the State prisons. I think that I have now demonstrated as clearly as it is possible to do, that the reply to all of the questions which have been propounded, must be in the negative. I have shown that our prisons do not exercise a restraining influence over the criminal population, that their action on the prisoners is not reformatory, and that their financial management has been most disastrous. In a word, the system inaugurated by the Constitution of 1846 has proved and entire failure and absolutely requires to be changed. I disclaim all intention to cast obloquy upon the individual inspectors, many of whom have been men of unblemished character and of very respectable attainments. Some of them, in my judgment, contained all the moral and intellectual elements which would fit them to shine as governors of prisons. The great failure is due to the faults of the system and not to the individuals who administered it. So long as the system is retained, the evils of which we complain will always be felt. This point I now propose to elucidate. 1. The mode of their selection is not well adapted to secure the services of the proper men. I speak to men who are familiar with political organizations and know how all these selections are made. They know better than I can tell them that the inspectors are selected by the State conventions of the political parties. I have used the word selected, but it is after all a misnomer, if not a satire, there is no selection in the proper sense of the word. How are our State conventions organized? The great mass of the people have neither part nor lot in the selection of the delegates. A few men gather at the primary meetings, and delegates who have their own private ends to serve procure their appointment from the meeting. The object of these men is to find out which is the strongest combination or clique and then identify themselves with that in order to found a claim upon the successful candidate for the spoils of office, in the shape of contracts, offices, and other unclean drippings from the party crib. It is no part

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of their design to nominate men who will fill the offices for the benefit of the people. They do not know and they do not care whether the nominees are men who are adapted by their peculiar organization or special training or moral worth to benefit the people in the administration of their respective offices. What they desire is that they shall be puppets whose wires they themselves can pull; that they shall be such as will use the offices for their own profit and their own aggrandizement. One man nominated under these influences, and with these objects in view, is offered for the suffrages of the people by each political party. The people do not know either of the men; they know nothing of their qualifications; they may be honest men or rogues; they may be men of abilities or dunces; they may have special adaptation for the management of prisons, or may be totally devoid of it; the people have no knowledge upon the subject one way or the other, and they have no means of acquiring it. In the conventions of both parties the nomination of State prison inspectors is always the last which is made; it is generally made late in the evening, when all the members are wearied with their labors, and when many have departed for their homes. If there has been a severe strife for the offices at the head of the ticket, the friends of the successful candidates naturally desire to heal the sores of the defeated party by selecting candidates from their ranks, and this is very commonly done by giving them the candidate for prison inspector, thus making this important office a mere makeweight in the scale of the candidates at the head of the ticket, and without any reference to his qualifications whatever. Or, if there has been no strife, then, when the nomination of these officers come up, the convention, decimated by the departure of its members, and those who remain having their interest in the work satiated by the disposal of the offices in which they have the greatest concern, or wearied out with the protracted length of the session, are in no situation to judge wisely or usefully in this matter. The result in practice is that the prison contractors and their agents, skillfully posted around, shout simultaneously, under the guidance of their leader, for some man who has been agreed upon among them, and the wearied members, mistaking the buzz of these interested parties for the voice of popular favor listlessly give their votes for him, though they care nothing about the necessary qualifications for the office and know nothing about the man. Sir, under these circumstances, there is no such thing as a deliberate and careful selection of the inspectors of prisons; there is no careful scrutiny into their character or their abilities. Those who have objections to their appointment have no means of presenting those objections, or if they do, the tribunal that is to judge them have neither the time nor the inclination to weigh them with the care and attention which they demand. I ask, most respectfully, whether it is not compatible with the profoundest respect for the people to deny that they are the most proper body to select these officers, about whose qualifications they are utterly ignorant? I would ask those gentlemen who are the greatest sticklers for the rights of the people upon this floor, whether they believe that more than one-tenth of the voters know any thing whatever about the candidates for this office, or whether more than one-tenth of this tenth have any means at their disposal of judging intelligently between the two candidates that are presented for their suffrages? I would ask finally, whether one-tenth of the members of this Convention can rise to-day in their places and give the names of the persons presented to the electors of this State for this office at the last election? Now, sir, if it is the case that the people do act and vote in entire ignorance of the qualifications of these candidates, that they know so little and care so little about the matter that they do not even remember the names of the candidates a week after they have voted for them, ought we not, as grave and honest men, to decide at once that the system of selection prescribed by the Constitution of 1846, is a bad one; that its practical working has been injurious to the people of the State, and that it ought forthwith to be changed. None of these difficulties would arise in an appointment of these officers by the Governor. The nomination would be made calmly and deliberately, after due inquiry and investigation; every one who objected to a nominee would have a full opportunity to state the reasons for his objection. The Governor would thus have the most fitting men in the State brought before him, a thoroughly intelligent selection could be made, and the Senators from every portion of the State could approve it or reject it. Surely, sir, no rational or impartial man can doubt for a single moment that this method is far more likely to secure good and able men than the other. Again, we must not forget that the Governor and Senate are elected by the people and are the servants of the people, as much as the delegates to a State convention; but unlike the latter, they act under the solemnity of an oath, and are responsible for their acts. Their action is on record and the individual share of each man in the appointment can be distinctly traced. This responsibility cannot be thus brought home to the delegates to State conventions; and in my judgment, this responsibility makes them much safer depositaries of the power of appointment. 2. Another strong objection to the present mode of appointment is, that the inspectors are, in spite of themselves, governed more by political considerations than the real welfare of the prisons, the prisoners, or society at large. They know that they are indebted for their nomination and their election to a certain clique, and they feel bound when they are elected to promote their interests. While human nature remains as it is nothing else can be expected. No branch of the public service requires experience for its successful performance so much as the subordinate officers of our prisons. Every year of service increases their value in a constantly increasing ratio. Yet in spite of their faithful performance of their duties, and in spite of the richness of their experience, they are liable to be turned out into the world to make way for new and untried men at every revolution of the political wheel. Few men in the State have had greater practical

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experience in the management of our prisons than Mr. Hubbell, as a contractor and as a warden, and few have studied the problems of prison management with more assiduity and success. In his report to the inspectors in 1864 he uses this significant language:

"Among the officers appointed by either party some will prove the right men for the positions in which they are placed; and when they have been so proved, whatever the folly of the political die, I would have them returned. The chances are four or five to one that the successors of such men will not be as good. Then why take the chances? Why, for mere party purposes, sport with the bodies and the souls of men, tamper with important interests of society, and risk the disorganization in a few days of systems of improvement and reform which it has taken as many months to construct? I would respectfully request your attention to the unhappy effects of these sweeping removals from office, upon prison discipline. I think it would be a great incentive to the faithful performance of duty if few officers were removed without a definite prospect in each case of doing better by the change; if proved fitness and efficiency might be regarded to some extent as the tenure by which their positions are held; and if those who would take the pains to introduce improvements might be reasonably certain of an opportunity to foster their growth. He reaps but little fruit who can only water his plant until it begins to blossom, and then must leave it to wither and die."

Thomas Kirkpatrick, the warden of Auburn prison, in his report to the inspectors in 1861, expresses himself nearly to the same effect on the injurious influence of politics on the proper management of the prisons. Mr. Hubbell, in a debate in the Assembly of the State in the year 1859, spoke as follows:

"During the last year our prisons have been managed by three inspectors, one from each political party, and, instead of coming together and arranging plans by which to manage the prisons to the best advantage, it would seem that each one has acted on his own account, and the prisons have been a bone for small politicians to contend about. These three inspectors have a plan by which each of them have charge of a prison for three months, and are called "inspectors in charge," and as such have full control of the prison assigned them. The democrat no sooner takes charge of his prison than he is beset by numerous political friends, who urge their own claims or the claims of friends; and it seems he considers it his duty or privilege, or both, to turn out of office as many officers as he pleases, who differ with him in politics, and replace them with some of his own stripe. The American inspector takes charge of his prison, and by way of retaliation, and to please *his* friends, turns out just whom *he* pleases, in order to make room for *his* friends. The republican, perhaps, mourns over the deplorable state of things, and says he would like to reform, but as 'to the victors belong the spoils,' and as it has become fashionable to run these prisons as political machines, he concludes that he must follow the example set him, and therefore his prison must pass through the same ordeal. And what confusion is created! The forms of proceeding adopted by the inspector in charge are very simple. Political friends surround him, and he is directed who to remove and who to appoint. Thus all he has to do is to direct a note to the officer he intends to remove, with the simple words, 'Sir, your services are no longer required.' No explanation is given, no matter how faithful, or with how much skill he has performed his duties; no matter how valuable he may be as a man and a citizen; no matter about the time of year; no matter how poor and needy his family may be; no appeals from a sick wife or starving children will avail if the officer has committed the unpardonable sin of voting as he pleased—he must leave, his situation is wanted for some more faithful and obedient political friend of the inspector in charge, or of his friend's friend, down to the fourth degree. How humiliating to think that even our State prisons must be made to bend, warp and tremble at the bidding of miserable pot-house politicians."

"From this cause our prisons are made to suffer greatly. So fashionable has it become to remove officers, that some of the inspectors have a few favorite friends whom they take with them from prison to prison as often as they change themselves. These inspectors change prisons every three months, and by this means the management of each prison is virtually changed every three months."

I have seen at Sing Sing, with my own eyes, at one time that almost every one of the subordinate officers was taken from the class called "roughs"—they had been keepers of gambling houses or drinking saloons, they were debauchees, profane swearers and drinking men. Are men like this adapted to reform the prisoners? Now, in the face of all this testimony, can we say that the system established by the present Constitution works well, and that politics are not an inseparable obstacle to their successful management? If you think the evils I have described ought to be removed, there is no way of doing any thing to cure them unless you make a radical change in the system that gives birth to them. 3. The absence of personal responsibility is a great cause of the existing evils in our prison system, and this irresponsibility is inherent in the very nature of a board. "Boards make screens," was a wise remark of Jeremy Bentham's; it sums up the history of all experience before his time, and has been confirmed by all the experience of mankind since he uttered the maxim. Permanent boards are irresponsible enough, but evanescent boards, in which one member drops out every year, and a new member comes in, carry irresponsibility to a maximum extent. If you ask any of the inspectors why the prisons are ill ventilated, or why the shops are inconveniently arranged, or why unwholesome food is fed to the prisoners, or why improper subordinate officers are allowed to remain in prison, the answer is that he has nothing to do with it, that he wished it were otherwise, but he has been overruled by his associates, and it is very possible that he speaks truly in relation to the particular grievance that

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you bring to his notice. If you ask another inspector he answers, and answers truly, that he desired to have it amended but was overruled by the majority. And just so will be the true answer of the third inspector if you address your inquiries to him. From the very nature of the case there can be no congruity in the plans formed by an evanescent board. Two out of three agree upon a plan of ventilation—on the question of heating, the minority in the former case combines with one of the majority and they adopt their plan of warming the prison. The consequence is that the plans of ventilation and heating are unharmonious, neither works well; whereas if they had been parts of the same plan both would have answered the purpose. The inspectors enter upon their duties in many cases, seeing the interior of a prison for the first time in their lives. They have never studied the subject of prison discipline and are ignorant of every thing that they are called upon to decide. They find two gentlemen associated with them, one of whom has been one year and the other two years in office who entered upon their duties as ignorant as himself. Thus by the operation of our present system we have a board which, in the language of scripture, is "ever learning but never coming to a knowledge of the truth." As soon as one of them begins to grasp the problems which he has to solve, his term of office expires and he gives place to a successor, who goes through the same routine that he has gone through. The human mind is governed by laws which are above and beyond the reach of all human legislation, and even of human volition, and there can be no successful result if those laws are violated. There will be no effort without an adequate motive. What sane merchant or manufacturer would expect to increase the efficiency of his clerks or of his artisans by taking away from them all motives to exert themselves for his benefit? Yet this is precisely what the State does with its prison inspectors. It pays them the same salary for neglecting their work, as it does for performing it faithfully and successfully. The man who exerts himself to the utmost, is no more likely to be re-elected than is his colleague who pays no attention whatever to his duties. One of the greatest stimulants to exertion is honor and renown. The officer who exposes his life upon the battle-field, may not undervalue his pay and rations: he will doubtless expect them and demand them, but, after all, they do not nerve his arm for the shock of the battle. They are not the inducements which take him from his home and friends to peril his life in the field. It is that he may place himself in some honorable niche among the heroes of his country, that his name may be embalmed in his country's songs, that future generations may be taught to lisp his name with reverence. These are the motives which induce him to suffer peril and privation, and in their absence the race of heroes would never have existed. Now, what honor or renown can accrue to the members of a board? If one of them forms a plan with infinite study, and executes it with the most perfect ingenuity, nobody ever hears of it, or if they do, they give the credit of it to the board, and not to him. This impersonal being swallows up all the honor which results from the successful performance of prison duty. Who knows the individuals that compose a board? What member of the Convention can tell the names of the present inspectors? Who can tell who constituted it six years ago? I doubt whether there are fifty persons out of the four millions in this State who can answer the question. As the impersonal board absorbs all the credit of the good deeds of its members, so it conceals effectually all their faults. It takes away this most important and operative security for good conduct. These views are not merely the statement of a theory—they express a positive fact. As evidence of the real injury to the interests of the State arising from this source, I give a few examples, taken almost at random from the official reports of the inspectors, of the culpable laxity in the administration of these institutions. In the report of the inspectors for the year 1844 we are told that, upon the incoming of a new board, they felt it to be their duty to make an actual count of the prisoners in the prison at Sing Sing. The books showed that there were seven hundred and ninety-five men confined there, but on actually counting them it was found there were only seven hundred and sixty-two in the cells. The books showed that there were one hundred and two women in the prison, but on counting them only eighty could be found. The new board made every effort to find out what had become of the fifty-five prisoners who had thus slipped through their fingers, but the most energetic inquiries failed to throw any light upon the matter, and no clue to the missing prisoners was ever found. On inquiry, it was found that no comparison between the number on the books and the number actually present in the cells had been made for five years. Each of the old board of inspectors said he supposed that some of his colleagues had attended to the matter, and he himself had given himself no concern about it. One of the convicts claimed that his time had expired. His name could not be found upon the register, nor could any record whatever be found of his commitment. From all that appeared upon the records or files he had been a volunteer prisoner for five years. Another prisoner also claimed that his time had expired. His name was not on the register, but when at length the original commitment was found among the files, it appeared that he had been kept in prison a long time beyond his sentence. Learning that no thorough search of the cells had been made for a long time, the inspectors directed one of the keepers to make one. From his report it appears that he found concealed in them, pocket knives, shoe knives, stone hammers, shoe hammers, alcohol, awls, scissors, nails, spikes, files, flint and steel, tinder box, chisels, obscene books, Burglar's Companion (book), tobacco, pipes and matches. The warden said he had not been ordered to search the cells, and the inspectors thought he would have searched them without orders, and thus between them this magazine of dangerous articles was suffered to accumulate without observation. The inspectors found from the books that the prison was over

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$50,000 in debt, and afterward they were referred by a former agent to a pocket book in one of the pigeon holes, which showed a large amount of indebtedness that did not appear upon the books. The books of the prison were found to differ from those of the Comptroller $20,000 in the aggregate and in the balance about $12,000. There was a large amount of debt due to the prison reaching to $89,850, some of which was of fifteen years' standing, and no efficient means had been adopted to collect it. What discrepancies have occurred since that time we have had no means of knowing. Contracts have been made so loosely that the advantage has in all cases been on the side of the contractor to the great loss of the State. Mr. Kirkpatrick, the warden of Auburn prison, tells us in the report for 1861 that the whole number of days' labor performed under four contracts in one year was 72,454½ days, which, at the contract price as drawn, amounted to $30,008. The same number of days' labor under their own bid amounts to $37,879, showing a loss in each year of $8,727, or in five years, the term of the contract, of $43,637. What was the amount of loss on the remaining contracts we are not informed. It will be observed that the contract as drawn binds the contractors to pay less than they actually offered to pay in their bids. This is done in consequence of the inexperience and the irresponsibility of the inspectors. The latter, under ambiguous phrases in the wording of the contracts, diminish their obligations to the State, prompted thereto by the pressure of a strong motive. The inpectors, in the absence of such motives, suffer themselves to fall blindfold into the trap so ingeniously set for them. The wording of many of these contracts is such that, though on a careless reading the discrepancy between the bid and the contract is not observed, yet, when the attention is specially directed to it, the meaning of the contract is too plain to be controverted. In other cases, the meaning is more latent, and these lead to litigation which is enormously expensive to the State, and in almost every case it has been unsuccessful, owing to the careless manner in which the inspectors have defended its interests. A very large number of cases have arisen in this way, as, for example, the case of Mr. Kingsland, where the State lost $53,000, without recovering interest. From the report of 1865, we learn that Mr. Chichester sued the State for damage for non-performance of contract in the year 1840. Judgment was given in his favor. The supreme court affirmed it. The court of errors reversed it in 1842–3. The case was tried again in 1846, when he died. In 1863, his executors obtained leave of the court to revive and continue the action, and was still on trial in 1866, before Judge Gould, of Troy, as sole referee. The witnesses on behalf of the State are nearly all dead, and it is almost impossible to defend the case successfully. These few examples, mere bricks from Babylon, will serve to show the Convention how loss and disaster invariably follow in the wake of divided, and therefore of irresponsible control. It is impossible to tell who is in fault for all these losses, mistakes and blunders. The men who were in office when these claims against the prison accrued have been long out of office; in the multitude of their private affairs they have forgotten about the circumstances; no one knows how or when the evil occurred; generally, the first intimation that the people have had that these losses have been incurred has been in the report of men who have been the successors of the men by whose fault it happened. The inspectors themselves say in their twelfth report: "It occurs to us that one of the greatest defects in our prison system lies in the want of a more direct personal accountability and an immediate individual responsibility of the principal officers." 'A responsibility is involved, but it is mixed and divided, and not that direct individual responsibility that there would be if a single inspector were steadily in charge of the same prison, and that for the management of such prison he alone stood accountable to the laws and the public. We have known an assistant keeper who, when put into a difficult shop and the responsibility of governing it devolved upon him alone, immediately took rank as a first-class officer—and thus because power to do so and direct personal responsibility were so joined together as to admit of no shirking." The evils arising out of the irresponsibility of boards are strikingly shown in the structure of the buildings; they are inconvenient in their arrangement, and lack permanence and strength. Mr. Hubbell, of Sing Sing, says in his report: "The workshops seem to have been located without any regard to good order or foresight as to future uses of the ground. Some of the kinds of business established have proved illy adapted to the employment of prisoners. Some of the shops have been altered and enlarged to meet the temporary wants of contractors, regardless of expense which the State must incur in consequence of the employment of extra keepers. The buildings generally cover so much ground, and the men are so scattered, that it is impossible to keep the expense of guarding them within reasonable limits. Our guard posts cover an extent of not less than forty acres." I have now shown by the citation of unquestioned examples, proofs and the arguments and conclusions of the most experienced men, that the irresponsibility incident to the very nature of an executive board has worked great disaster to the people and to the prisoners, involving injury to their moral, material and financial interests. Let me ask if this result might not have been predicted from the general experience of mankind in all analogous cases? Does a merchant ever commit the command of a ship to a board of captains? Does a nation ever commit the command of an army to a board of generals? Does a manufacturer ever commit the management of his manufactory to a board of superintendents? Is it not shown by the universal sense of mankind that when uniformity of plan and unity of action is a prerequisite of success, a single head is immeasurably superior to many heads? And if this is so, can we as reasonable men suppose that the management of our complicated system of prison discipline is an exception to the universal rule? If you will place the prisons under the control of one man who understands his business, and who is really responsible for all that is done, your con-

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tracts will be drawn so that they will not lead to constant litigation; the contractors will not pay less than the amount of their bids for the services of the men they hire. The buildings will be made to conform to some convenient plan by which the services of a large number of the present guards and under-keepers can be dispensed with, and the heavy drain which has been made upon the treasury will at length be stopped. Can this Convention, as faithful servants of the people, do less than this? Hitherto I have argued these questions on the hypothesis that they are are to be conducted in the future as they have been in the past. But, sir, we are called upon by every motive which can act upon us as men, as Christians, as politicians and as statesmen, to inaugurate a new system, which elsewhere has been crowned with very great success, and which I am fully persuaded would prove as successful here as it has been in Europe. If we do so, all the reasons which I have offered for a single head, and for the unity of action, and the complete responsibility which springs from it, will be found to be increased in force in a tenfold proportion. Before I proceed to give an outline of the new system of prison discipline, which I hope ere long to see adopted here, allow me to state for a moment the origin and progress of our present system, which I believe is known to very few of even the statesmen of New York, and which is a *terra incognita* to the great mass of our people. Previous to the administration of Governor Jay, thieves, counterfeiters and such like depredators were punished by whippings at the whipping-post or at the cart's tail, by branding on the cheek or hand with a hot iron, by exposure in the pillory or the stocks, by cropping off the ears, by pecuniary fines, by imprisonment in the common jail, and by the gallows. In every case, however, imprisonment was the mode of punishment in combination with one or more of the punishments that I have enumerated; and hence it occupied a wider place in the public mind than any other mode of punishment. It gradually grew in the public mind as the true ideal of retributive justice. As population increased it was found that crime was increasing, and that property and life were growing less and less secure. This state of things was met from time to time by the Legislature, by making the class of crimes which seemed to be most prevalent capital offenses. This course was exceedingly offensive to the society of Friends, who then constituted a much larger portion of the population than they do at present, and with whose religious principles the death penalty was directly in conflict. This religious body were united to a man upon this point, and they were all strenuously exerting themselves to devise some means which, without sacrificing the life of the offender, should have the effect of diminishing the amount of crime which they were compelled to acknowledge was increasing with fearful rapidity. Two of the wealthy and intelligent members of this body signalized themselves by their assiduous study of these questions. Thomas Eddy and John Murray patiently studied the records of the criminal courts, conferred with judges, justices of the peace, sheriffs, and other officers charged with the enforcement of the criminal law. They visited the criminals in the jails, saw with their own eyes their daily occupation, heard with their own ears their daily conversation, and in this way they were enabled to take the gauge and mensuration of crime, its causes and its consequences, to an extent which had never been reached before. The statistical results of these examinations showed them, and enabled them to convince others that the death penalty, which was apparently so terrible, was totally inefficacious in repressing crime. They found that crime increased in proportion to the frequency of public executions, that these spectacles actually hardened men's hearts and steeled them to the commission of deeds of criminal hardihood, that the whippings and burnings and croppings and exposures in the pillory and the stocks, not only had the same effect upon the general public, but that they brutalized the victim and only prepared the way by which a petty thief became a burglar, and a burglar became a murderer. They found, too, that the common jails were nurseries of crime, that the very worst classes of society were huddled together, without instruction, to while away the time with cards and drink, and licentious conversation, the adepts in crime teaching the young all the more advanced arts of the burglar and the assassin, and that mutual corruption was the only result of the system as then carried on in the State. They reasoned that a great amount of the crime so much complained of arose from idle habits and loose associations, and that the most natural way of meeting the difficulty was to enforce habits of industry and thrift as a part of the punishment inflicted on the criminal, and they very reasonably argued that while engaged in the performance of these tasks they could not indulge in those evil communications which had been found by experience to be so corrupting to good manners. Thomas Eddy, though insignificant in his personal appearance, was a man of remarkably enlarged and statesmanlike views, and although a very modest man and retiring in his manners, he possessed an extraordinary power over the minds of those with whom he was brought in contact. He was one of the most trusted friends, and most reliable advisers of De Witt Clinton, during the long and arduous struggle in which he was engaged while initiating and constructing the canals, and Edward Livingston was indebted to him for the germs of that grand scheme of prison discipline which he so eloquently elaborated in his celebrated report to the Legislature of Louisiana. Mr. Eddy was untiring in his efforts to leaven the public mind with his views of prison discipline. He visited nearly every influential man in the State, explaining to them the actual condition of affairs, combatting their objections and sustaining his own ideas with the natural eloquence that belonged to him. At length the public mind became ripe for action, and in the year 1796 the Legislature passed an act drawn with great care, embodying the views of Messrs. Eddy and Murray, and which made a very great and important change in the criminal code. By its provisions all the provisions of previous laws, annexing the penalty of death to crimes, except

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for treason and murder, and aiding or abetting the same, were repealed. All other felonies were to be punished by a term in the State prison not exceeding fourteen years, either at hard labor or in solitude, or both. Deodands were abolished. Whipping and all other cruel punishments were henceforth forbidden. Petit larceny, buying or receiving stolen goods, were to be punished by fine or imprisonment in the State prison not exceeding one year, or both. For the second offense the imprisonment might be extended to three years. John Watts, Mathew Clarkson, Isaac Stoutenburgh, Thomas Eddy and John Murray, Jr., were appointed to select a lot in the city of New York, not exceeding two acres, for the site of a State prison; and Philip Schuyler, Abraham Ten Broeck, David Hall, Jeremiah Van-Rensselaer and Teunis Van Vechten were appointed to select a site of four acres for a similar purpose, in the city of Albany. After the purchase of suitable sites, the commissioners were authorized to build a prison in New York and in Albany, on such plan as they might deem advisable—$25,000 being appropriated to the New York prison, and $20,000 for the prison at Albany. The person administering the government, with the advice and consent of the council of appointment, may from time to time appoint not exceeding seven inspectors, for each prison, who are to meet at the prison once in each month or oftener, and they are empowered to make all needful rules in conjunction with the judges of the supreme court for the government of the prison not inconsistent with the Constitution and the laws of the State. The Governor and council of appointment were to appoint a keeper who, if possible, was to understand some mechanical trade, and was to be allowed £350 as a salary. The keeper appointed his own assistants, subject to the approbation of the inspectors. The keeper was authorized to punish refractory convicts by confinement in solitary cells on bread and water, as long as the visiting inspector should determine. The prisoners were to be habited in coarse clothing, and to be fed on coarse food at the discretion of the inspectors; and were to be kept at hard labor, so far as might be consistent with their health and sex. This act was approved by Governor John Jay, March 26, 1796. It was a step in the right direction, but as experience has abundantly shown, it did not go far enough. Their whole reliance was on the cultivation of habits of industry on the part of the prisoners, they did not think of the evils arising from association during the night, of the necessity of instructing their ignorance, and of supplying them with adequate motives to good conduct. At the next session of the Legislature the authority to build a prison in Albany was suspended, and was never afterward renewed. The prison at New York was built, and converted into a great manufactory. It was found to be a great improvement upon the old system, but great and glaring defects were soon found to develop themselves, which prevented it from realizing the ideal of its projectors. Escapes were frequent. The free intercourse of the prisoners during the night was corrupting in its tendency; the old ones had a most injurious influence over the neophytes in crime, and the opportunities which unrestrained intercourse among the prisoners during the night gave them to conspire among themselves, was most injurious to the discipline of the prison. It labored under great pecuniary difficulties. The prison was compelled to purchase the tools and raw material for cash, while it was under the necessity of selling the manufactured articles on credit. One of the inspectors in rotation was on duty each week, and in consequence of this divided responsibility, many bad debts were made, and much money was lost. It had scarcely begun its operation before the hostility of the mechanics was violently excited against the prison. Shoemaking being the most profitable branch of labor, and there being the most steady demand for the products of that branch of industry, a large proportion of the prisoners were employed on it. The shoemakers of the State were so much excited by this circumstance that in 1804 the Legislature was compelled to pass an act restricting the inspectors from employing more than one-eighth of the prisoners in the business of shoemaking. The working of the New York State prison showed so many defects that the friends of prison discipline set themselves zealously at work to find out the causes of the difficulties which manifested themselves, and to apply adequate remedies. They thought the main obstacle to success was the nocturnal associations of the prisoners, and the remedy proposed was the entire isolation of the prisoners, but as they were well satisfied that solitary confinement must inevitably impair the mental faculties of the prisoners, they compromised the matter by arranging a plan by which the prisoners were to labor together in strict silence in the day-time, while they were confined in separate cells at night. Public sentiment in the course of a few years settled upon this plan with a good degree of unanimity, and on the twelfth of April, 1816, the Legislature passed an act empowering Elijah Miller, James Glover and John H. Beach, to purchase a site for a new prison in the village of Auburn, and to build a prison there on the general plan of the New York prison, but with such improvements as experience had suggested. Before beginning to build, the commissioners were required to submit their plans to the chancellor and judges of the supreme court and secure their approval or a majority of them. Fifty thousand dollars was appropriated for the purchase of the site and the commencement of the buildings. A week afterward an act was passed appointing James Bent, Peter W. Radcliffe and Thomas Taylor, commissioners to visit the State prison in New York, to inquire into its management, and whether any abuses existed there, they were also directed to visit the prisons in Pennsylvania, and report thereon. We have never been able to find the report of these gentlemen, but in the following year an act was passed which introduced sweeping changes into the old system, which were marked by a statesmanlike insight into the causes of the difficulties in prison management far in advance of the age, and which reflected the greatest honor upon its authors. The inspectors were required to contract for the rations and

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hospital stores with the lowest bidder. No more materials were to be bought to be worked up by the prisoners, but they were to be employed in working on stock which should be furnished for that purpose by outside customers, and the manufactured articles which had accumulated and were unsold were to be disposed of at public auction. A separate account was directed to be opened with each prisoner, in which he was to be charged with his food, clothing and hospital expenses, and giving him credit for the full amount of his earnings. As long as he strictly obeyed the rules of the prison and behaved himself in all respects in an exemplary manner, twenty per cent of his earnings were to be set apart for his benefit and invested in United States stock. The amount so set apart was to be paid to him on his discharge, or if he died during the term of his imprisonment it was to be paid to his heirs. When a prisoner who had been sentenced to not less than five years' imprisonment, had in all respects behaved well, and had acquired by the aforesaid means fifteen dollars or more per annum, his sentence was to be abridged one-fourth and was to receive the money to which he is entitled out of his earnings, but such money was to be forfeited by his misconduct or attempt to escape. The counties of Oswego, Oneida, Madison, Chenango and Broome, and all the counties west of these, were formed into a district which were to send their prisoners to Auburn, and until that prison was completed the canal commissioners were authorized to contract for the labor of the prisoners from these counties. Their services were not to be let for less than six months. I cannot find that these admirable provisions giving the prisoners a direct interest in the pecuniary success of the prisons, and enabling them to earn a remission of a part of their sentence by good behavior, was ever repealed: nor can I find that it was ever obeyed. It seems to have been ignored from the beginning as too grand an idea to be grasped by the intelligence of that age. In 1818 the Legislature took another step in advance by the recognition of the fact that insane persons were not the proper subjects of prison discipline, and by the enactment of a law authorizing their removal to a lunatic asylum. In 1819 the Legislature took a retrograde step, which was the cause of unspeakable evils. It enacted, for the first time in the prison history of New York, that the keepers might punish refractory prisoners by the infliction of not exceeding thirty-nine lashes, or they might be put in irons or in the stocks. But this was in some degree counterbalanced by the very valuable provision that the State prisoners should henceforth be confined in separate cells. In the ensuing year (1821) the Legislature took still another step backward. The dead bodies of convicts were granted to surgeons for dissection, and the keepers were authorized to deliver such bodies to the medical schools mentioned in the act, and for the first time it authorizes the letting of the services of prisoners to contractors. Now, sir, this step authorizing contractors to have the labor of our prisoners has been fraught with innumerable evils to the prisons of this State. It is the real cause why it is impossible to maintain any good and efficient discipline in our prisons. These contractors are authorised to send in their foremen, and it is a positive fact that in the prison shops of this State a great many persons from outside go in and work with the prisoners, and the result is that letters are constantly being carried in and out. One of the inspectors, Mr. Forrest, assured me that his last business was to discover a secret mail of this kind. A man had a pocket in the back of his vest, in which he continualy brought in and carried out letters to and from the prisoners. Mr. Forrest said that he was informed of the fact, and that he required the man to be searched. The man was perfectly willing to be searched, but when he took off his jacket and the pocket was found with six or seven letters in it, he had to give up. Sir, this is constantly being done. A few months ago, a light was seen in one of the prisons at night and on going in the watchman found the foreman of the prison there. He was there with a basket, and on inquiring of him what he was doing with the basket, he said that he was in there taking some things which belonged to his employer. The watchman thought it was a matter which should be reported to the warden, and he did so, and a thorough search was made, and then, in a closet, there was found gin, brandy, sardines, and all sorts of delicacies and luxuries, presenting a perfect pantry of a cook-shop. This mode was made use of for the purpose of stimulating the prisoners to over-labor. How can you expect, with that kind of thing in existence, that discipline can be maintained? It is certainly easier to maintain the financial arrangements of a prison by having the intervention of contractors, but it is perfectly possible to maintain them without contractors. We have already found that the Clinton prison can be carried on without the assistance of contractors. We have seen that in New Hampshire one man runs the prison. He supports it, and pays a very considerable sum into the State treasury from the labor of the prisoners, and there are no contractors whatever. There is no necessity for them. If we had a single head to our prisons, and could procure a good business man who could contrive plans and had a resolute purpose to make the prisons self-supporting, it could be done. But it never can be done with the conflict of opinions in a board where one man would wish to regulate the thing in one way and another in another. There must be but one regular, persistent plan, just as a merchant has in his own business, or we can never look for success without contractors. But, sir, there have been two improvements in the discipline of our prisons. This Legislature adopted some good provisions. The public mind had been excited considerably by abuses of the pardoning power, and in order to remedy the evil it enacted that no convict should be recommended for pardon who had not earned at least twenty-five cents per day for one year preceding the application, provided his health was not seriously impaired. They farther enacted a very wise provision, that the prisoners at Auburn should be divided into three classes under the direction of the inspectors — the first class was to consist of the oldest and most heinous offenders, who were to be kept entirely sepa-

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rate from all the rest, and be confined both day and night in solitary cells. The second class consisted of less heinous offenders, who were to be confined for three days in the week in solitary cells, and for three days in silent associated labor. The third class was to consist of the younger and less hardened class of offenders who were to be confined during the night in separate cells, but who were to be employed in silent associated labor every day in the week except Sundays. This law, so wise and so benevolent in its inception was never executed, it added very considerabiy to the labors of the officers, and as the inspectors did not trouble themselves about the enforcement of it, the keepers were quite willing to spare themselves the trouble of carrying it into execution. The complaints respecting pardons were not abated by the legislation of 1821, and in 1822 the Legislature passed an act requiring the judges to examine their notes of trials from time to time, and write opinions as to which prisoners should be recommended for pardon. Such opinions were to be filed in the office of the prison and to be furnished by the clerk of the prison to the Governor on application. This was found to involve a greater amount of labor than the judges could perform, and the provision, though never repealed, was suffered to fall into disuetude. The authority which had been granted to the keepers, to use the lash, and the admission of contractors and their agents into the prisons, had now began to manifest their legitimate results in producing a frightful amount of petty tyranny and revolting cruelty. Dark tales were in circulation how men had been driven to idiocy and insanity and suicide by a refinement of cruelty which would have been considered harsh, even in the city of Algiers. The Legislature therefore determined to institute an inquiry into these alleged abuses, and appointed Stephen Allen, Samuel M. Hopkins and George Tibbets, commissioners, who were required to visit the prisons at New York and Auburn to inquire into all their affairs, to compare their respective systems of discipline and to report to the Legislature such amendments of the law as they might deem necessary. I have not been able to find the report of this commission, but in the following year — 1824 — the same gentlemen were appointed to build a new prison at Sing Sing, and $70,000 was appropriated for the purpose. As this was the only important legislation on the subject during this session, I infer that this was the principal recommendation of the commissioners. As charges of great cruelty continued to be brought against the prison officers, the Legislature, in 1826, directed the commissioners for the building of the Sing Sing prison to visit Auburn and inquire into the abuses which were alleged to exist there, with respect to excessive flogging, and depriving the sick of hospital privileges. They were also specially charged with the duty of examining into certain cases of alleged improper conduct of the inspectors in trading with prisoners, and in corruptly appointing improper persons as officers. They were also directed to inquire into the causes of the death of Rachel Weecks, who had recently ied in the prison. I regret that I have been unable to find the report of these gentlemen; but I am very sure, from undoubted testimony, that much of the alleged cruelty was true, and that our prisons at that time, were literally "habitations of cruelty" and that the only effect of the discipline, was to convert bad men into absolutue demons. The prison at Sing Sing having been completed for the reception of prisoners in 1828, the commissioners were authorized to transfer the male prisoners from the New York prison and to contract with the common council of New York for the care and custody of the female convicts, and they were directed to prepare plans for a female prison at Sing Sing to be submitted to the next Legislature. These plans were accordingly made. The Legislature did not make an appropriation, but under the intelligent suggestion of its committee upon that subject, adopted a resolution requiring the commissioners to inquire whether some place could not be found contiguous to a populous village where the female prisoners might have employment and moral instruction and the superintending care of benevolent females. There was much difficulty in relation to the female prison and to the management of female prisoners generally. They were not kept steady at work like the men, and there was little discipline in the prisons where they were confined. They were constantly quarreling and fighting, the air around them was thick with curses, blasphemies and the most revolting and licentious conversation. A woman who had served out her term there was ready for murder or any evil work that the devil could suggest. In 1835 the agent of Sing Sing prison was directed to build a female prison at that place, and all the female prisoners in the State were required to be sent to it as soon as completed. When the prison was ready for the reception of prisoners in 1837 this provision was carried into effect, and it has ever since continued to be the female prison of the State. The mechanics of the State had always looked upon the prisons with an eye of jealousy, and now each year increased their aversion to the employment of the prisoners at trades, which they believed had a tendency to reduce their own wages. The Legislature, as each succeeding year rolled round, added new provisions which they thought might relieve the evil. New trades were introduced into the prisons, different from those carried on in the State. Plantations of mulberry trees were made at the prisons with a view to the manufacture of silk. The officers were prohibited, under severe penalties, from entering into contracts for labor at the prohibited trades, and various other means were ineffectually resorted to to calm the popular excitement. In 1842 the Governor, Secretary of State and Comptroller, were directed to appoint commissioners, who were to inquire whether mining and smelting operations can be carried on upon any of the State lands by the convicts, they were also to inquire into the expense of locating such lands and the expense of building a prison. On the report of these commissioners in 1844 a law was passed establishing such a prison in Clinton county, and its erection was at once commenced by a draft of two hundred of the worst convicts in Sing Sing. They were taken to Dannemora and encamped in

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the heart of the wilderness, where they built a prison almost wholly by their own unaided labor. This prison was ready for occupation in 1846, and has ever since been principally devoted to the mining of iron ore and the manufacture of iron. On the 1st day of January, 1847, the new Constitution went into effect, by which the whole management of the prisons was committed to a board of three inspectors, one of whom was to be elected annually. The prison association, in the early part of that year, prepared an elaborate code of prison discipline, which was adopted by the Legislature, with three important additions. By the first, the use of the lash was utterly prohibited in all the prisons. By the second, teachers were to be appointed to instruct such prisoners as were uneducated, in reading, writing and arithmetic. By the third, it was made the duty of the inspectors to build twenty cells at Sing Sing, ten at Auburn and five at Clinton, each containing 996 cubic feet of clear space, to be used for the solitary confinement of such prisoners as were habitually disobedient to the rules of the prison, and who could not with safety be kept in association with others. This last provision has been utterly ignored by every successive board of inspectors since that time, to the great damage of the State and the great detriment of the discipline of the prisons. The only important change in the discipline of the prisons, made since the adoption of the Constitution of 1846, has been the re-enactment of the principle of the law of 1817, by which good conduct on the part of the prisoner is made to earn a remission of a part of his sentence. This change was made at the instance of the prison association, earnestly and ably supported by Governor Seymour. The law was enacted in 1863, and, as amended by the act of 1864, it provides that entire good conduct on the part of a prisoner shall earn a remission of one month for each year during the first two years; two months on each succeeding year until the fifth year: three months on each following year until the tenth year, and four months on each succeeding year of the term. No measure ever adopted has worked so much unmixed good as this has done. From this summary statement of the legislation of this State in relation to prisons, it will be seen that its criminals are subject to one uniform and unvarying system, without any thought of individual adaptation. The good and the bad, the old and the young, are mixed together in one mass; the gentle and the froward receive precisely the same amount and kind of punishment. There are no earnest, well-directed efforts to enlighten their ignorance or to stimulate their moral affections. All who enter these walls are compelled to work all day, and be confined in a narrow cell all night. They are allowed to listen to one sermon on Sunday, and those who desire it may spend one hour in the Sabbath school. The only inducement held out to them voluntarily to co-operate in promoting their own reformation, is the law of 1864, to which we have just alluded. This is all there is of the boasted Auburn system. Now, Mr. President, let us pause for a single moment, and ask ourselves the question, whether these simple and unmeaning provisions meet the conditions of the problem which it is our duty to solve. We have some thousands of vigorous, active men, in the prime of life, without principles, ready for any kind of assault upon either property or persons that may be suggested to them; they have been educated by long practice to a high degree of skill in making those assaults successfully and in concealing their participation in them. They know no other kind of life and are unfitted to be successful in any other. We have another large class who do not desire to lead a criminal life, and who would greatly prefer to walk in the paths of honesty, if they could do so; but they are affected with a congenital feebleness of will which unfits them to resist temptations—the moment they are assailed by temptation they fall. Such being the facts, is not our so-called prison system simply ludicrous? How can we expect that keeping men in narrow cells, except when they are engaged in silent and monotonous labor, will make unprincipled men conscientious; will make ignorant men intelligent; will make feeble volitions strong; will help men who do not know how to make an honest living, to become successful in an honest struggle for life. We see at a glance that the remedy has no sort of relation to the disease. That we have no right to expect that this method will either deter others from the commission of crime, or reform those who have been already guilty of it. This point being established, we are under the necessity of inquiring earnestly for a more excellent way. The motto of the sluggard has always been, "What can't be cured must be endured." The earnest statesman has always reversed the idea, and has held "that what can't be endured, *must* be cured." the system we are in search of must provide, above all things, for teaching the convict how to earn an honest living. This implies a cultivation of the head and heart as well as of the hands. To make a living out of any trade it is as essential for a man to know how to dispose of his wares, as it is to know how to fabricate them. He must learn how to keep accounts, how to judge of the quality of the raw material; where and how he can procure it to the best advantage. Customers are attracted by pleasing manners, as they are repelled by coarse and vulgar conduct. If we expect him to succeed, we must cultivate his manners as much as we train him to manual dexterity. We all know that the intercourse of society is hedged about with irresistible laws; if those laws are obeyed, our relations with society are peaceful and pleasant, if they are violated a penalty is evolved out of every violation, with absolute and unerring certainty. I say, sir, that we know that such is the case, but the criminal knows nothing of the kind; he sees no sequence of cause and effect between the social law that he has violated and the misery of which he is so painfully conscious. Any system which is truly remedial must make the criminal thoroughly acquainted with these social laws, and with the inevitable penalties which God has annexed to their violation. We must show them, through a system of instruction and discipline that they can understand and appreciate, that "honesty is," really and truly, "the best policy," that every violation of the social law

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